STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JORDAN O. LEWIS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CARLENE KAYE LEWIS,

Respondent-Appellant.

UNPUBLISHED
May 15, 2008

No. 281809
Genesee Circuit Court
Family Division
LC No. 94-100298-NA

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (h). We affirm.

Respondent first argues that she was denied due process and equal protection when the trial court did not permit her to be physically present for the termination hearing. At the time of the hearing, respondent was incarcerated. She did not physically attend the hearing but participated by telephone and was represented by counsel.

An incarcerated parent does not have the "absolute right to be present at the dispositional hearing." *In re Vasquez*, 199 Mich App 44, 48-49; 501 NW2d 231 (1993). This Court has applied the three-part balancing test set forth in *Mathews v Eldridge*, 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976), to determine whether a trial court has to secure the physical presence of an incarcerated parent at a termination hearing. *Id.* at 50. The *Mathews* balancing test requires the reviewing court to look at the "private interest that will be affected by the official action," the likelihood of "an erroneous deprivation of such interest" and the probability that other procedures would protect that interest, and the "[g]overnment's interest," which includes "the fiscal and administrative burdens" of a substitute procedure. *Mathews, supra* at 335.

With regard to the first factor, this Court has declared that the private interest affected by parental termination hearings is a compelling one. *Vasquez, supra* at 47.

With regard to the second factor, the likelihood of an erroneous deprivation was not increased by respondent's physical absence at the termination hearing. Respondent's attorney knew that respondent was incarcerated and conferred with her at the pretrial hearing.

Respondent also spoke with her attorney, the minor child, and the child's attorney on the morning of the termination hearing in the trial judge's office. Although respondent had difficulty hearing the testimony at times, and the trial court had to remind everyone present to speak loudly and directly into the speaker for respondent, a review of the transcript reveals that respondent's presence would not have changed anything. The essential facts of the case were not in dispute. Moreover, respondent does not assert on appeal that anything factually significant is missing from the transcript for appellate review. Respondent was well represented and was able to testify on her own behalf. At no time during the hearing did respondent or her attorney object to the proceedings or ask for time to confer or discuss the testimony. Thus, the likelihood of an erroneous deprivation of respondent's parental rights as a result of her telephone appearance was not increased by her physical absence. *Id.* at 48. Also, because there were no facts in dispute, respondent's physical presence would have not added any value to the hearing. *Id.*

With regard to the final factor, the burden on petitioner to transfer respondent from the Ypsilanti prison where she was incarcerated to Flint where the termination hearing was held would have been higher than any risk of erroneous deprivation in this case. Accordingly, respondent's presence at the termination hearing by telephone did not deny respondent her due process rights.

Respondent's equal protection argument also fails. Because there is no absolute right to be physically present at the hearing to terminate parental rights and due process does not necessarily require the trial court to procure the physical presence of an incarcerated parent, there is no disparity in treatment between respondents who attend the hearing in person and by telephone. *Id.* at 50.

Respondent also argues that the trial court's order terminating her parental rights should be reversed. The trial court did not clearly err in finding that MCL 712A.19b(3)(a)(ii), (c)(i), and (g) were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Therefore, any error in terminating respondent's parental rights under MCL 712A.19b(3)(h) was harmless because the trial court needed clear and convincing evidence of only one statutory ground to support its termination order. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Further, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent pleaded no contest to the allegation of long-term drug abuse in the petition, and the caseworker assigned to the case testified that respondent had a severe addiction to crack cocaine. Respondent failed to address her substance abuse problem, and after the March 7, 2006 adjudication hearing, respondent failed to participate in the case at all. Respondent was incarcerated from June 2006 through the termination hearing, except for about two weeks in April 2007. Respondent saw the minor child once during that time when she happened to run into him in Flint. Respondent also spoke to the caseworker once in April 2007 and asked for a visit, but visitation had already been suspended. Because respondent failed to make any attempts to regain custody of her child and would not be able to participate in any services until May 2008, her earliest outdate, the trial court properly concluded that clear and convincing evidence supported termination pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), and (g).

Considering that when the minor child was removed from respondent's care he had lived with her for less than one month because she had been incarcerated for the previous 11 years and that he had actually only lived with respondent for about three or four years of his life, the trial court properly concluded that termination of respondent's parental rights was not clearly contrary to the best interests of the child.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski