

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMANUEL JEREMIAH
CHEKIN-HERNANDEZ, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NILOUFAR CHEKIN-HERNANDEZ,

Respondent-Appellant,

and

VICTOR JEREMIAH HERNANDEZ,

Respondent.

In the Matter of MARIO ANGEL CHEKIN-
HERNANDEZ, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NILOUFAR CHEKIN-HERNANDEZ,

Respondent-Appellant,

and

VICTOR JEREMIAH HERNANDEZ,

Respondent.

UNPUBLISHED
July 22, 2008

No. 283148
Kent Circuit Court
Family Division
LC No. 06-054274-NA

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Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

In these consolidated appeals, respondent Chekin-Hernandez appeals as of right from a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent's sole claim on appeal is that the trial court erred in failing to provide an interpreter who spoke Farsi. This Court generally reviews a trial court's decision not to provide an interpreter for an abuse of discretion. *People v Warren (After Remand)*, 200 Mich App 586, 591; 504 NW2d 907 (1993). However, respondent did not raise this issue below and, therefore, it has not been preserved for appeal. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007). Accordingly, the issue is reviewed for plain error. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

Although the trial court did not have a statutory obligation to appoint an interpreter, see MCL 393.501 *et seq.* (dealing with deaf persons) and MCL 775.19a (dealing with accused persons), a court has inherent authority to appoint an interpreter when a party or witness does not speak English "because inherent in the nature of justice is the notion that those involved in litigation should understand and be understood." 75 Am Jur 2d, Trial, § 166, p 409. However, an interpreter "should never be appointed unless necessary for the conduct of a case. That is, interpretation should be resorted to only when a witness's natural mode of expression is not intelligible to the tribunal." *Id.* The court should appoint an interpreter when a party is incapable of understanding the nature of the proceedings against her, or incapable of defending herself, because of a language barrier, *People v Atsilis*, 60 Mich App 738, 739; 231 NW2d 534 (1975), or when a witness is not understandable, comprehensible, or intelligible such that the absence of an interpreter will deprive a party of some basic right, *Warren, supra* at 591-592. However, a trial court is not under a duty to affirmatively establish a party's proficiency in the English language when no evidence is presented to it that could put the issue in doubt. *Atsilis, supra* at 739.

The record here discloses that respondent testified at a review hearing that her native language is Farsi and that she had studied English as a second language while attending high school in Michigan. She stated that she understands spoken English and implied that she could read English, but stated that she has difficulty with "words out of the book[.]" An interpreter appeared at one review hearing and at the termination hearing. The record does not indicate why the interpreter appeared or why the interpreter appeared at only two hearings. Nevertheless, the record shows that both respondent and her attorney waived the interpreter's services when he appeared. Even assuming they waived the interpreter because he spoke the wrong language, there is nothing in the record to suggest that respondent was unable to communicate in English or unable to understand the nature of the proceedings. Two social-worker witnesses testified that they had spoken to respondent often and that she answered their questions appropriately. One witness specifically testified that respondent spoke English very well, which was borne out by respondent's own testimony. When respondent was called to testify, she answered questions put to her in an appropriate manner, indicating by her answers that she understood what was being asked, and at no point did respondent request the aid of an interpreter or indicate that she did not

understand English sufficiently to participate in the proceedings. Under similar circumstances, this Court has declined to find that the failure to appoint an interpreter constituted an abuse of discretion. *Id.* at 739-740. Respondent has not shown that the trial court's failure to appoint an interpreter constituted plain error.

Affirmed.

/s/ Patrick M. Meter

/s/ Michael R. Smolenski

/s/ Deborah A. Servitto