

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In the Matter of MEGAN S. BENSON, Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTOPHER BENSON,

Respondent-Appellant,

and

KRISTINE EILEEN BENSON,

Respondent.

---

In the Matter of KEVIN SEIGFRIED BENSON,  
Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTOPHER BENSON,

Respondent-Appellant,

and

KRISTINE EILEEN BENSON,

---

UNPUBLISHED

October 21, 2008

No. 284773

Kent Circuit Court

Family Division

LC No. 07-052678-NA

No. 284774

Kent Circuit Court

Family Division

LC No. 07-052679-NA

Respondent.

---

In the Matter of MEGAN S. BENSON, Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

No. 284775  
Kent Circuit Court  
Family Division  
LC No. 07-052678-NA

KRISTINE EILEEN BENSON,

Respondent-Appellant,

and

CHRISTOPHER BENSON,

Respondent.

---

In the Matter of KEVIN SEIGFRIED BENSON,  
Minor.

---

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

No. 284776  
Kent Circuit Court  
Family Division  
LC No. 07-052679-NA

KRISTINE EILEEN BENSON,

Respondent-Appellant,

and

CHRISTOPHER BENSON,

---

Respondent.

---

Before: Servitto, P.J. and Donofrio and Fort Hood, JJ.

PER CURIAM.

In these consolidated appeals, respondents challenge an order that terminated their parental rights to the minor children. Both respondents' rights were terminated pursuant to MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions leading to adjudication continue to exist), and (g) (failure to provide proper care or custody). Respondent mother's parental rights were also terminated pursuant to subsection (3)(j) (risk of harm to child if placed with parent). Respondents do not challenge the statutory basis for termination of their parental rights. Because respondent father was not prejudiced by his absence from the termination hearing due to his incarceration in Ohio, and with respect to respondent mother, termination was not contrary to the best interests of the children, we affirm.

Respondent father does not challenge the establishment of statutory grounds for termination of his parental rights but argues that the trial court erred in finding that his presence at the termination hearing was not required. An incarcerated parent is not entitled, as a matter of absolute right, to be present at the dispositional hearing of a proceeding to terminate parental rights. *In re Vasquez*, 199 Mich App 44, 48; 501 NW2d 231 (1993). Instead, a court must balance "the private interest at stake, the incremental risk of an erroneous deprivation thereof in the absence of the procedure demanded, and the government's interest in avoiding the burden the procedure would carry." *Id.* at 47.

Respondent father fails to indicate how he could have assisted counsel in making a case, and there is simply no evidence that respondent father was prejudiced by his absence. The children spent nearly three years in foster care from 2003 to 2006 in a prior case. Respondent father was incarcerated in Ohio in 2006, and his earliest release date was January 2009. By his own admission, it would take at least six months after his release for him to become stable enough to care for the children. He had not seen the children since his incarceration. One letter written to each child in February 2008 was respondent father's only attempt at communicating with the children, and the letters were inappropriate because respondent father made promises to get the children back. The children hardly knew their father and did not identify him as their father. Respondent father did not know the children at their current ages or appreciate the gravity of their situation. Additionally, the cost associated with transporting the father from a prison in Ohio to Michigan would have surely been prohibitive. Given that respondent father's presence at the termination trial would not have changed the result, the trial court did not err in denying respondent father's request to be present at the termination hearing.

Respondent mother does not challenge the establishment of statutory grounds for termination of her parental rights but argues that termination was clearly against the children's best interests. Once the trial court determined that statutory grounds for termination were established by clear and convincing evidence, the trial court was obligated to terminate respondent mother's parental rights unless it appeared, on the whole record, that termination was

clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The children first entered the foster care system in 2003 in Ionia County due to respondent mother's substance abuse and instability. Respondent mother worked with the agency and the children were ultimately returned to her care in 2006. Even after successfully completing services, respondent mother continued to test positive for drug use within months of the children's return to her. This case began in June 2007, when respondent mother's live-in boyfriend contacted the agency to let them know that she left the home and that he was not in a position to care for the children. Respondent mother last saw the children in July 2007 because she did not produce negative screens after that. She was admitted to an inpatient substance abuse program in September 2007 but was unsuccessfully dismissed from the program after approximately two weeks. Respondent mother points to her "success" in having her children returned to her care in 2006, but the prior case demonstrates that, even after three years of services and effort, she could not stop her drug use. Although the minor children were bonded to their mother, and the evidence shows that she loved them dearly, the children had spent most of their lives out of their mother's care and were entitled to permanence and stability. Termination of respondent mother's parental rights was not clearly contrary to the children's best interests.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood