

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HUNTER BOSKOVICH and
BRIAN BOSKOVICH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER FAUBLE-WEBB,

Respondent-Appellant.

UNPUBLISHED

December 11, 2008

No. 286128

Mecosta Circuit Court

Family Division

LC No. 05-004902-NA

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent does not challenge the trial court's finding that clear and convincing evidence supported termination under the above statutory provisions but instead challenges the constitutionality of the Michigan Court Rules, which permit the admission of otherwise inadmissible evidence, such as hearsay, during the dispositional phase of a child protective proceeding. Respondent argues that because hearsay was admissible during the dispositional phase of the proceedings, she was denied the protections afforded by due process. We disagree.

The due process guarantees of the federal and Michigan constitutions, US Const, Ams V and XIV; Const 1963, art 1, § 17, apply to the adjudication of important rights and impose constraints on government decisions that deprive individuals of liberty and property interests within the meaning of the Due Process Clause. *In re Brock*, 442 Mich 101, 110-111; 499 NW2d 752 (1993). The government may not deprive a person of life, liberty, or property without due process of law. *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 605-606; 683 NW2d 759 (2004). Our Supreme Court has noted that parents have a significant interest in the custody of their children and that that interest is an element of liberty protected by due process. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

Respondent's argument nonetheless fails. Respondent did not raise any challenge, constitutional or otherwise, to the admission of hearsay evidence in the proceedings before the

trial court. Respondent's challenge before this Court is thus an unpreserved contention of constitutional error that is reviewed only for plain error affecting substantial rights. See *People v McCuller*, 479 Mich 672, 681; 739 NW2d 563 (2007). Under the plain error rule, three requirements must be met, namely (1) an error must have occurred, (2) the error was plain, meaning clear or obvious, and (3) the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In this case, the trial court did not rely upon hearsay evidence to support its determination that termination was warranted. Rather, the trial court found that respondent had made no progress toward reunification based upon respondent's repeated positive tests for alcohol, prescription drugs, and illegal drugs, and also upon respondent's own admissions that, after 15 months, she still did not have stable housing for the children, was not employed, and was incarcerated. Because the trial court did not rely upon hearsay, respondent's challenge fails under the first prong of the plain error test because the error alleged did not occur. Even if the trial court had relied upon hearsay, however, this Court has previously rejected such a challenge, concluding that the admission of all relevant and material evidence, including hearsay, at the dispositional phase of a child protective proceeding does not violate due process where the evidence admitted is fair, reliable, and trustworthy. See *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d 731 (1985).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter