

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAMION AMERIO and
ANASTASIA AMERIO, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LINDA AMERIO,

Respondent-Appellant,

and

GREGORY AMERIO,

Respondent.

UNPUBLISHED

January 27, 2009

No. 287615

Ingham Circuit Court

Family Division

LC Nos. 07-001154-NA

07-001155-NA

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (g), (j), and (k)(i). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant argues that the trial court erred in failing to secure her presence for the termination trial. We disagree. 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.” *Vasquez, supra* at 47.

There is simply no evidence that respondent-appellant was prejudiced by her absence. While it is true that respondent-appellant’s attorney was allowed to withdraw at the beginning of the hearing, the truth was that respondent-appellant had absolutely no interest in participating in the case. The children were removed from her care in June 2007. Respondent-appellant

appeared at the initial preliminary hearing, but she then failed to participate in any subsequent hearings. She made no effort to comply with services, nor did she attempt to visit the children. Her only contact was a December 2007 telephone call to the worker to report that she was living in Texas, that she wanted the children back, but that she was not interested in participating in services. It was later discovered that, in February 2008, respondent-appellant was in prison in Alabama, awaiting sentencing on federal fraud charges. She received personal service of the termination proceedings and also received information from her attorney, but she took no steps to participate in the termination hearing. While MCR 2.004 states that a trial court *must* order telephone participation in termination proceedings when the parent is incarcerated within the custody of the Department of Corrections, this Court has specifically held that MCR 2.004 addresses only the *Michigan* Department of Corrections and therefore, does not apply to parents incarcerated outside of the State of Michigan. *In re BAD*, 264 Mich App 66, 71; 690 NW2d 287 (2004). Because respondent-appellant's presence at trial, in person or by phone, would not have changed the results of the trial, any deprivation of her due process rights was harmless.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra