STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MACKENZIE CHEYENNE KING, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DARRYL L. ALLEN,

Respondent-Appellant.

UNPUBLISHED
January 27, 2009

No. 287656
St. Joseph Circuit Court
Family Division
LC No. 2007-000304-NA

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

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(j) and (k)(i). We affirm.

Any error in relying on § 19b(3)(k)(i) as a basis for termination was harmless, because the trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing evidence. MCR 3.977(G)(3); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007); *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Respondent had never met his daughter and was unwilling to make the commitment necessary to establish a relationship with her. Benjamin Notestine, the father of the child's sibling, had been a part of the child's life since she was just a few weeks old and was the only man she knew as her father. A social worker testified that the child was bonded to Notestine and that removing the child from an established family and sending her to live with a stranger would be traumatic and was reasonably likely to cause irreparable psychological harm. Further, the trial court's findings regarding the child's best interests were not clearly erroneous. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000). Therefore, the trial court did not err in terminating respondent's parental rights. *Id.* at 356-357.

Respondent argues that the trial court erred by failing to disqualify itself for personal bias. Because the alleged grounds for disqualification were known to respondent at the time they arose and respondent failed to raise the issue below, it has not been preserved for appeal. *People v Mixon*, 170 Mich App 508, 514; 429 NW2d 197 (1988), rev'd in part on other grounds 433 Mich 852 (1989); *People v Gibson (On Remand)*, 90 Mich App 792, 796; 282 NW2d 483

(1979). We thus review the issue for plain error. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

Parents have fundamental due process rights in child protection proceedings. *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2002). "Due process requires an unbiased and impartial decision maker." *Kloian, supra* at 244. A judge is disqualified when he cannot hear a case impartially. *Cain v Dep't of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996). But the party challenging the impartiality of a judge must overcome a heavy presumption of judicial impartiality. *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999). Partiality is established by showing that a judge is actually and personally biased or prejudiced for or against a party or his attorney or by establishing one of the other grounds set forth in MCR 2.003(B).

Although the record shows that the trial court was annoyed at respondent for being an hour late for the hearing and admonished him, mere expressions of annoyance are not evidence of bias or partiality. *In re Hocking*, 451 Mich 1, 13 n 16; 546 NW2d 234 (1996). The court's statements were ambiguous with regard to whether it was going to hold respondent's late arrival against him in deciding the case, which would be improper, but later statements made by the court in rendering its decision indicate that it did not take respondent's lateness into account in deciding whether to terminate his parental rights. Accordingly, respondent has failed to establish plain error.

Affirmed.

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