

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARCADEZ STAR ROBERTS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KYLE ROBERT PALMATEER,

Respondent-Appellant,

and

SARAH RUTH ROBERTS,

Respondent.

UNPUBLISHED
December 22, 2009

No. 293194
Genesee Circuit Court
Family Division
LC No. 08-124047-NA

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Respondent Palmateer appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (h), and (j). We affirm.

Respondent's claim on appeal is that the referee who conducted the hearing on the supplemental petition for termination in June 2009 failed to advise respondent of his right to have the circuit court review the referee's recommended findings and conclusions and additionally failed to advise respondent of his right to appellate review in this Court and the assistance of a court-appointed attorney.¹

¹ While not evident in his brief, assuming that respondent is also arguing that the court committed clear error in its ruling regarding the statutory grounds for termination and the child's best interests, we hold, on the basis of the record, that the court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence, nor in
(continued...)

The construction, interpretation, and application of the court rules is a question of law that is reviewed de novo on appeal. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003); *Kernen v Homestead Dev Co*, 252 Mich App 689, 692; 653 NW2d 634 (2002). Statutory interpretation is a question of law that is also reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

With respect to the issue concerning appellate review to this Court, although the referee did not advise respondent of his appellate rights at the close of the hearing, the failure to do so did not constitute error because an order terminating respondent's parental rights had not yet been entered. The court rules clearly provide that such advice, which may be given "orally or in writing," is to be given "[i]mmediately after entry of an order terminating parental rights." MCR 3.977(I)(1). The circuit court entered an order consistent with the referee's recommendation on July 6, 2009. On the same day, it sent respondent written notice of his appellate rights, as well as his right to request a rehearing under MCL 712A.21(1), and a form for requesting appointment of counsel to assist him with such proceedings. Respondent made a timely request for appointed counsel and filed a timely claim of appeal; there is no record that he requested a rehearing. Thus, respondent has failed to demonstrate any error regarding the advice of appellate rights.

With respect to the issue concerning review by the circuit court of the referee's recommended findings and conclusions, respondent cites MCR 3.977(I), which is inapplicable to the argument, and an unnamed statute. The governing court rules are MCR 3.913(C) and MCR 3.991, but because respondent frames no argument under the applicable rules, we deem the issue waived. Moreover, respondent could have raised the issue in a motion for rehearing in the circuit court following entry of the order terminating parental rights, a procedure available and made known to respondent, but he failed to do so. And we do not find that respondent's substantial rights were affected, presuming plain error, given the overwhelming evidence supporting termination, which respondent himself does not challenge. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra

(...continued)

finding that termination was in the child's best interests. MCR 3.977(J); MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). Respondent acknowledges that he is incarcerated with the Department of Corrections, and his earliest discharge date is in September 2021.