

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of P.M., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHAE MULLINS,

Respondent-Appellant.

UNPUBLISHED

March 16, 2010

No. 291874

Berrien Circuit Court

Family Division

LC No. 2008-000103-NA

Before: Talbot, P.J., and Whitbeck, and Owens, JJ.

OWENS, J. (*dissenting*).

I respectfully dissent. I would affirm on both the issue of the adequacy of the trial court's finding of jurisdiction and on the issue not dealt with by the majority, the trial court's denial of the untimely jury request.

While there was conflicting evidence presented at trial, there was sufficient evidence from which the trier of fact could find by a preponderance of the evidence that the child came within the court's jurisdiction pursuant to MCL 712A.2(b)(1) and/or (2). The trial judge was in a far better position than we to evaluate the credibility of the witnesses who appeared before him and to determine the weight to be accorded their testimony. Unlike the trial judge, we do not have the benefit of observing the demeanor of the witnesses as they testify. Of course, trial courts can err; when that error is clear and not harmless, we must correct the error by reversing. I do not believe clear error in the finding of jurisdiction occurred in this case, however.

Since the majority reversed on the jurisdiction issue, it did not reach the jury trial issue. Respondents in cases under MCL 712A.2(b) have the right to a trial by jury, a right which we zealously guard. However, the right is not unlimited; one must request it in a timely fashion or show why the interest of justice should excuse a late request. In this case, the respondent mother was given abundant notice of the trial date and that a jury request would have to be made within 14 days of the date summons was served on her. She was personally served with a summons on November 20, 2008 for trial on January 28, 2009. The summons recited that she must make a jury request within 14 days. She did not comply. In fact, the jury request was apparently received by the prosecutor on the morning of trial; the judge appeared unaware of whether the

request had been received by the court as of the time the trial was commenced. The mother's attorney admitted the request was filed late but asked the court to exercise its discretion to grant the untimely request. The prosecutor, counsel for the father, and the lawyer-guardian ad litem for the child all objected to the untimely request. In my opinion, the court's denial of the jury request, apparently filed the day of trial and after almost 10 weeks' advance notice, did not constitute an abuse of discretion.

/s/ Donald S. Owens