

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JAILIN M LAWRENCE and  
KENDRA MICHELLE LAWRENCE-EASTER,  
Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

YOVONKA LAWRENCE,

Respondent-Appellant,

and

ROBERT E. EASTER,

Respondent.

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In the Matter of JAILIN M. LAWRENCE and  
KENDRA MICHELLE LAWRENCE-EASTER,  
Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT E. EASTER,

Respondent-Appellant,

and

YOVONKA LAWRENCE,

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UNPUBLISHED

May 4, 2010

No. 292791

Muskegon Circuit Court

Family Division

LC No. 07-035847-NA

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Before: SERVITTO, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

In this consolidated appeal, respondent-appellants appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 9.976(A); MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondents are not married, but have lived together and apart, off and on, for the past twenty years. Apparently, at the time of the termination hearing respondents were living together. This case did not turn on respondents' employment or finances, quality or stability of housing, or provision of basic physical necessities, but on their inability to provide competent supervision and safe care for their young children. The conditions of adjudication were failure to provide proper supervision, safety and care for the children, which constituted failure to provide proper care or custody, and created a risk of harm to the children. The initial dispositions occurred August 9, 2007 and November 2, 2007, and more than 182 days elapsed between the dispositions and the June 8, 2009 termination of respondents' parental rights. Respondents complied with most services, but the record supports that they did not benefit sufficiently to provide the safe and adequate parenting that very young children require. A parent must benefit from services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superceded by statute on other grounds, as stated in *In re Hansen*, 285 Mich App 158; 774 NW2d 698 (2009).

The evidence showed Lawrence suffered from mild mental retardation and dementia due to a convulsive disorder she developed as a result of an auto accident, and that, later in the proceedings, she functioned better after her seizure medication was adjusted. However, she still suffered seizures lasting one to two hours, and at times had difficulty recognizing people, and comprehending and applying information. She required frequent prompting to accomplish simple tasks, and repeatedly experienced difficulty solving problems. Due to no fault of her own, she was unable to independently parent in a safe and effective manner, would continue to experience seizures, and was unable to change her level of ability regardless of the number of services she received.

With regard to Easter, the evidence showed his intellectual capacity was limited, but that it was possible to improve his parenting with intensive mentoring. Nevertheless, after eight months of mentoring, he was not able to parent alone. In addition, Easter implied that he had no desire to serve as the children's primary caretaker when he indicated a desire to stipulate to termination of his parental rights and consent to a relative's adoption of the children if Lawrence's parental rights were terminated. The plan to have a neighbor present with Lawrence during all times Easter was unavailable had proved unreliable in the past, and the plan for a 20-year-old nephew to reside with the family and provide parenting assistance was unrealistic given his complete lack of parenting experience and intention to look for employment. This proceeding lasted two years, and by the time of the termination hearing respondents had not yet

established a definite, workable, long-term solution that would enable them to safely supervise and effectively parent the children. The children remained at risk of harm in their care, and the trial court did not clearly err in terminating their parental rights.

In addition, the evidence showed that termination of respondents' parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence showed that the children enjoyed being with respondents and that respondents loved the children. Yet, respondents would not be able to properly parent them within a reasonable time. A maternal relative desired to adopt the children and maintain the family bond. Viewing the evidence in its entirety, the trial court did not err in finding the termination of parental rights was in the children's best interests.

Finally, Easter argues on appeal he was denied a fair trial because a conflict of interest, appearance of impropriety, and structural defect in the trial court's procedure occurred when the referee who authorized the children's petitions was appointed one year later to represent the children as lawyer guardian ad litem at the termination hearing. Specifically, he argues that the guardian ad litem may have been biased against him when she served as referee in authorizing the petitions, that during the termination hearing the trial court judge may have been partial to the guardian ad litem due to her previous position as referee, and that such a clear conflict of interest undermined the fairness, integrity or public reputation of the proceeding.

Easter did not raise this issue in the trial court, and therefore forfeited appellate review. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). The Courts disfavor consideration of unpreserved claims of error. *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999). To avoid forfeiture of a constitutional right, a plain or obvious error must have occurred that affected substantial rights. *Id.* at 763. Generally, in order to affect substantial rights a showing must be made that the error prejudiced the outcome of the lower court proceeding. *Id.* However, Easter suggests that although he failed to preserve the issue for appeal and although any error may not have prejudiced the outcome of the proceeding, reversal of the order terminating his parental rights is required because the defect was structural and affected the fairness, integrity or public reputation of judicial proceedings. We disagree.

Certain defects in the trial mechanism have been held to be "structural" because they affect the entire framework within which the trial proceeds, and are not simply errors in the trial process. These structural defects defy harmless error analysis and require reversal, but are found in a very limited class of cases. *Carines*, 460 Mich at 765, citing *Johnson v United States*, 520 US 461, 468-469; 117 S Ct 1544; 137 L Ed 2d 718 (1997). In this case, the use of a former referee as a guardian ad litem, although questionable and not advised, did not affect the framework of the proceedings. There was no evidence of either a conflict of interest or judicial bias, and therefore no structural defect.

First, the record does not show, and Easter does not point to, any ruling, statement, or element of the proceeding that indicated the trial judge was partial toward the guardian ad litem during the termination hearing. Second, the evidence did not show the referee's bias against Easter during the preliminary hearings. The referee's finding of probable cause to authorize the petitions, and the trial judge's later affirmation of that finding when it found a preponderance of evidence to assume jurisdiction over the children, were supported by the evidence and occurred well before the referee was appointed as guardian ad litem. Third, no conflict of interest arose

when the referee was appointed to represent the children, one year after serving at the preliminary hearings, because the referee and lawyer guardian ad litem's roles are both to protect the children.

Affirmed.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Jane M. Beckering