STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SAMARIA DNAE HAMILTON and DASHAUN EDWARD MOSLEY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOHN THOMAS HAMILTON,

Respondent-Appellant,

and

ARGOLA JUNE MOSLEY and DAVID VINCENT,

Respondents.

UNPUBLISHED
May 4, 2010

No. 293488
Kent Circuit Court
Family Division
LC No. 07-053618-NA

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent John Thomas Hamilton[1] appeals as of right the order of the trial court terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

Respondent first contends that the notice of the August 14, 2007, preliminary hearing was defective. We disagree. Under MCR 3.965(B)(1), the trial court must determine whether the parent has been notified of the preliminary hearing. *In re Rood*, 483 Mich 73, 94; 763 NW2d 587 (2009). The trial court may proceed with a preliminary hearing in the absence of a parent if notice has been given or if the court finds that a reasonable attempt to give notice was made. MCR 3.965(B)(1).

[1] Because only respondent Hamilton has appealed, the use of "respondent" refers only to him throughout this opinion.

In this case, at the preliminary hearing the trial court noted respondent's absence and inquired about what efforts had been made to notify respondent of the hearing. The protective services investigator testified that she had provided written notice of the hearing to respondent the previous day at his last known address as provided to the trial court, and had placed the notice in the mailbox at that address, but that the envelope was incorrectly addressed to "David" Hamilton. Respondent does not contend that he did not receive the notice, nor does he contend that he did not live at that address, nor does he contend that he was confused by the incorrect name on the notice. We agree with the trial court that though imperfect, a reasonable attempt to give notice was made.

Moreover, respondent has identified no harm arising from his absence at the preliminary hearing; thus, reversal related to any defect is not warranted. MCR 2.613(A). Respondent's attorney was present at the preliminary hearing and no determinations were made by the trial court at the preliminary hearing that adversely affected respondent's rights. Though a tentative decision was made to place the children with their maternal great-aunt, the trial court specifically stated that it was not excluding respondent as a possible custodian for the children and would await further investigation by petitioner regarding the appropriateness of respondent as a placement for the children. Respondent attended the next two hearings before the trial court and was only disregarded as a possible placement for the children when he failed to participate in further proceedings before the trial court and in the parent agency agreement. Under the facts of this case, the trial court did not clearly err in finding that a reasonable attempt to give notice was made, and any error that may have occurred was harmless.

We also reject respondent's contention that the trial court erred in determining that petitioner had made reasonable efforts to provide services to respondent. When a child is removed from a parent's custody, the agency charged with the care of a child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Before the trial court enters an order of disposition, it is required to state whether reasonable efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child to be removed from the home. MCL 712A.18f(1). Services are not mandated in all situations, but the statute requires the agency to justify its decision not to provide services. *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000). This Court has suggested that to successfully claim lack of reasonable efforts, a respondent must establish that he or she would have fared better if the agency had offered the services in question. See *In re Fried*, 266 Mich App at 543.

In this case, numerous services were offered to, and rejected by, respondent. Petitioner offered to provide respondent with parenting time, parenting classes, and domestic violence counseling. Respondent argues that the agency should not have offered him domestic violence counseling and substance abuse testing and assessment, but instead should have provided assistance with employment and housing. Substance abuse services were offered, however, because respondent's psychological evaluation indicated marijuana dependency. Similarly, domestic violence counseling was recommended because there were reports that respondent had engaged in domestic violence and sexual acts in front of another child in the family.

Assistance with housing and employment understandably were not offered because respondent represented to the foster care worker that he had already obtained employment and housing. Thereafter, respondent discontinued his contact with the agency and failed to respond

to communications from the foster care worker. In light of the numerous services that were offered to respondent, it cannot be said respondent would have fared better with another approach, nor can it be said that the trial court clearly erred in finding that reasonable efforts were made to rectify the conditions that led to the removal of the children.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Joel P. Hoekstra