

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 22, 2010

In the Matter of A. M. Rose, Minor.

No. 295948

Saginaw Circuit Court

Family Division

LC No. 08-031731-NA

Before: MURRAY, P.J., and SAAD and M. J. KELLY, JJ.

MEMORANDUM.

Respondent appeals a trial court order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons set forth below, we reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The record reflects that respondent was incarcerated since the child was approximately four months old and he remained incarcerated when the supplemental petition for termination was filed. After pleading no contest to his criminal charges, defendant was to be sentenced just four days after the termination trial and, with credit for time served, he would likely be scheduled for release within months. The termination trial occurred before our Supreme Court released its opinion in *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). In *Mason*, our Supreme Court clarified that an incarcerated person must be afforded the right to participate in each proceeding in a child protective action and that he or she must be offered a service plan, with appropriate review and updates. The record shows that, except for the initial proceedings and the termination trial, respondent was not afforded the opportunity to participate by telephone in the nearly year-long review process between November 24, 2008 and December 10, 2009. Other than an initial meeting, service workers declined to meet or talk with respondent during the pendency of this case, they intentionally did not respond to his written inquiry about the case, and they only sent reports to him after court hearings.

The record further shows that respondent was not offered a service plan, he was not offered or referred to any services, and petitioner had no knowledge of respondent's voluntary participation in anger management and educational programs in jail. As in *Mason*, petitioner "disregarded respondent's statutory right to be provided services and, as a result, extended the time it would take him to comply with the service plan upon his release from [jail]—which was potentially imminent at the time of the termination hearing." *Id.* at 159. Thus, respondent was offered no opportunity to work toward reunification with his child and, accordingly, the court

clearly erred when it found that, due almost entirely to his incarceration, there were grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Michael J. Kelly