

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

August 12, 2010

In the Matter of C. J. MILLS, Minor.

No. 295640

Wayne Circuit Court

Family Division

LC No. 08-481699-NA

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Before: WILDER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Respondent appeals an order that terminated her parental rights to her minor child under MCL 712A.19b(3)(f). We reverse and remand for proceedings consistent with this opinion.

Respondent argues that the court violated her right to procedural due process because it did not follow the procedures set forth in the statutes and court rules regarding termination of parental rights. Respondent further claims that the court erroneously advised her that her rights had already been terminated and that adoption was the only issue before the court.

We review unpreserved constitutional issues, including due process rights, for plain error affecting substantial rights. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). A parent's right to the custody of her children is an element of liberty protected by due process guarantees. See *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982); *In re JK*, 468 Mich at 210. This includes the right to procedural due process before parental rights are terminated. *In re Rood*, 483 Mich 73, 92, 121; 763 NW2d 587 (2009). A respondent's right to due process does not disappear because she was not a model parent. *In re Santosky*, 455 US at 753; *In re AMB*, 248 Mich App 144, 211; 640 NW2d 262 (2001). Due process requires fundamental fairness, which is determined by the private interest affected, the risk of erroneous deprivation and the likely value of additional protections, and the government's interest. *In re Rood*, 483 Mich at 92-93. The respondent's interest in care and custody of her child is very high. *In re HRC*, 286 Mich App 444; 781 NW2d 105 (2009).

“[P]rocedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, DHS policies and procedures, and various federal laws . . . .” *In re Rood*, 483 Mich at 93. It is essential that respondents receive notice and a meaningful opportunity to participate in the proceedings. *Id.* at 121. Here, the court was required to hold a trial to determine whether it had jurisdiction under MCL 712A.2, *In re AMAC*, 269 Mich App 533, 536 & n 2; 711 NW2d 426 (2006), and respondent had the right to request a jury, MCL 712A.17(2). The court was required to read the

petition allegations, unless respondent waived that right. MCR 3.972 (B)(2). Respondent also had the right to written notice at least 14 days before a termination hearing. MCL 712A.19b(2); MCR 3.977(B). At that hearing, petitioner had the burden of proof. MCR 3.977(A)(3). Moreover, a court cannot skip the dispositional phase and terminate a respondent's rights if the respondent is denied the opportunity to show that termination is not in the child's best interests. *In re AMAC*, 269 Mich App at 538-539.

We hold that respondent was denied procedural due process. The record reflects that, at the pretrial hearing, the court stated that respondent's rights were already terminated and it told respondent's attorney to explain the adoption statutes to respondent. Indeed, throughout the proceedings, the court mistakenly believed respondent's rights to the child were already terminated and it held a hearing only to address whether respondent's mother should be permitted to adopt the child. Respondent was not told she had a right to a jury at any stage, the court did not read the petition allegations, and the court repeatedly told respondent that the court was not deciding whether to terminate her rights because that had already been done. Moreover, though MCL 712A.17c(7) requires the lower court to appoint a lawyer-guardian ad litem to represent the minor child, one was not appointed to represent the child in this case. Despite these numerous errors and a complete failure to afford respondent the opportunity to meaningfully defend her parental rights, the court issued an order that terminated respondent's rights, merely noting "some confusion" about whether respondent's rights were terminated in a prior proceeding. Under these circumstances, the court committed clear error affecting respondent's substantial rights.

Respondent also argues that there was insufficient evidence to terminate her parental rights. Based on the errors noted above, regardless of whether the limited evidence in the record supports the termination decision, respondent must be granted the opportunity to present evidence with notice that her parental rights are at stake.<sup>1</sup>

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

/s/ Kurtis T. Wilder  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad

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<sup>1</sup> We note, however, that the court also erred when it failed to apply the amended MCR 712A.19b(5), which requires the court to find termination is in the child's best interests before terminating respondent's rights.