STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BLOSSOM KAVANAGH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHAWN TAYLOR, a/k/a SHAWN KAVANAGH,

Respondent-Appellant,

and

GIGI BRETADO,

Respondent.

UNPUBLISHED
July 27, 2001

No. 231376
Ogemaw Circuit Court
Family Division
LC No. 96-010091-NA

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (h) and (j). We affirm.

Respondent-appellant, who was incarcerated in federal prison in Kansas at the time of the termination hearing[1], argues that the trial court violated his right to due process when it denied his request for a writ of habeas corpus to enable him to attend the hearing. We disagree. An incarcerated respondent has no absolute right to attend a termination hearing. *In re Vasquez*, 199 Mich App 44; 501 NW2d 231 (1993). Instead, the trial court should apply the three-part balancing test of *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976), in determining whether the respondent's presence is required. Under this test, the trial court must balance the value of the private interest at stake, the risk that the respondent will be erroneously deprived of that interest if the court does not implement the requested procedure, and the burden

[1] The most optimistic projection of a release date is 2010.

on the government if it does implement the requested procedure. *Vasquez, supra* at 47-48; *In re Render*, 145 Mich App 344, 348-349; 377 NW2d 421 (1985).

Although the trial court did not articulate these factors verbatim in its letter denying respondent-appellant's request, it is apparent that the trial court considered both the risk to respondent-appellant if he did not attend and the burden on the government of obtaining his release from a federal prison and transporting him to Michigan for the hearing. Furthermore, we find no error in the trial court's application of these factors. Respondent-appellant's position could not have been significantly bolstered by his presence in the courtroom. Respondent-appellant had the opportunity to confer with his counsel before the hearing, his counsel made a good effort to argue on his client's behalf, and respondent could have, but did not, avail himself of long distance communications such as a videotaped deposition. Respondent-appellant's argument that he might have helped his defense if he had been in the courtroom is sheer speculation. Regarding the third part of the test, the trial court reasonably considered that transporting respondent-appellant from Kansas to Michigan would have been costly.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Richard Allen Griffin