

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

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In the Matter of K.J.P., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

JOSEPH PIERRE,

Respondent-Appellant,

and

ANITA DIAMOND,

Respondent.

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UNPUBLISHED

November 26, 2002

No. 237837

Ingham Circuit Court

Family Division

LC No. 00-382351-NA

Before: Whitbeck, C.J., and Hood and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (j).<sup>1</sup> We affirm.

Respondent, an immigrant from Haiti, had been living with the child's mother for approximately nine years. Intervention occurred after reports of domestic violence between the parents. The minor child also reported being subject to abuse by respondent. When taken from his parents' custody, the child was unable to feed or dress himself. Respondent did attend a psychological evaluation, counseling, and visitation. During visitation, respondent did not allow the child to engage in age appropriate behaviors or activities. Arguments during visitation between the parents would cause the child to regress into a fetal position on the floor. Counseling was discontinued when respondent and the child's mother denied that any abuse occurred or that any other parenting problems existed. An interpreter was provided for

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<sup>1</sup> The court also terminated the parental rights of respondent, Anita Diamond, the child's mother, who is not a party to this appeal.

respondent during court hearings, but not for out-of-court treatment obligations. Respondent maintained steady employment and was able to obtain a driver's license.

Respondent first contends that the trial court deprived him of procedural due process by failing to appoint an interpreter who could attend out-of-court interactions between himself, his therapist, and the foster care workers to ensure clear communications regarding his court-ordered treatment obligations.<sup>2</sup> This Court reviews de novo the constitutional question whether a due process violation has occurred. *Thomas v Pogats*, 249 Mich App 718, 724; 644 NW2d 59 (2002). A respondent in a termination of parental rights case is entitled to procedural due process protections in light of the significant liberty interest at stake, specifically the parent's interest in the companionship, care, custody, and management of his children. *In re Brock*, 442 Mich 101, 109, 110; 499 NW2d 752 (1993). "Due process requires fundamental fairness, which is determined in a particular situation" by assessing the interests at stake, including the private interest to be affected by an official action, the degree of risk of an erroneous deprivation of the private interest under the procedures employed, and the governmental interest involved. *Id.* at 111.

Even assuming that procedural due process protections encompass the right of English impaired respondents to have access to interpreters to assist their meaningful interactions with foster care caseworkers and others involved in a respondent's treatment plan programs, we conclude that respondent received due process during the instant proceedings. Our review of the record reveals no risk of an erroneous deprivation of respondent's liberty interest through the procedures employed by petitioner. *In re Brock, supra*.

The record does reflect that out-of-court communications with respondent did not always occur smoothly. The foster care workers, a psychologist, and the child's mother all testified that they did not always understand everything respondent said or at least had some difficulties communicating with respondent. Furthermore, petitioner undisputedly sent respondent for therapy to a psychologist who did not speak French Creole, respondent's native dialect, despite the conclusion by a previous psychologist who had some communication difficulties with respondent that respondent visit a therapist who spoke the same language.

Nonetheless, three foster care workers and respondent's therapist all averred that they successfully managed to communicate with respondent and that respondent clearly understood all of their conversations. This was achieved by speaking slowly to respondent, repeating respondent's statements back to him, and making him repeat some of their statements, or asking the child's mother to clarify certain statements.<sup>3</sup> The foster care worker in charge of the child's case specifically testified that she ensured that respondent clearly understood the reasons for the

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<sup>2</sup> Respondent does not challenge the quality of the in-court translation services he received.

<sup>3</sup> We note that the record indicates that the child's mother was a slow learner and could not conversantly speak French Creole or understand everything respondent said in that language. The record does not support, however, respondent's suggestion that the mother, who had lived with respondent for nine years, suffered an impairment that prevented her from interpreting occasional words or phrases during respondent's part English, part French Creole conversations with the foster care workers and therapist.

child's placement in foster care and the court orders with respect to respondent's expected participation in treatment. The therapist had no doubt that respondent knew what he needed to do to get help. After the therapist terminated respondent's unsuccessful therapy sessions, the caseworker ensured that he understood the ramifications of his failure to complete therapy. Respondent did not attend appointments with another therapist because he felt that he did not need it. Respondent never gave any indication of his desire or need for interpretation assistance during therapy and his other contacts with petitioner, despite having arranged for a friend to accompany him to the first day of the termination hearing for interpretation purposes.

Accordingly, we conclude that the record does not substantiate that any significant or lingering confusion existed regarding respondent's treatment plan obligations or opportunities to participate in therapy. Furthermore, in light of the substantial evidence establishing that petitioner's agents and respondent understood each other's discussions, we cannot characterize as clearly erroneous the trial court's rejection of respondent's proffered excuse for his noncompliance with this treatment plan that he could not understand his interactions with petitioner. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).<sup>4</sup>

Respondent next alleges that the trial court lacked clear and convincing evidence to terminate his parental rights. We disagree. This Court reviews for clear error the trial court's decision that termination of parental rights has been proven by clear and convincing evidence, and the court's decision whether termination serves the child's best interests. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court's findings of fact qualify as clearly erroneous when this Court's review of the record reveals some evidence to support the findings, but leaves this Court with the definite and firm conviction that the a mistake was made. *In re Conley, supra*.

Petitioner requested termination of respondent's parental rights based on 712A.19b(3)(c) (i), and (j). Once the trial court finds that a statutory ground exists for terminating parental rights, it must order termination "unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). The testimony presented clearly and convincingly established that the conditions leading to the child's adjudication continued to exist more than 182 days after entry of the initial dispositional order regarding the child. The child initially arrived in the court's temporary custody on the basis of respondent's repeated domestic assaults of the child's mother in the child's presence, the mother's report that respondent had hit the child, the child's exhibition of fearful behaviors, and respondent's unwillingness to cooperate with protective services workers. In a January 2000 dispositional order, the trial court required in part that respondent engage in counseling and anger

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<sup>4</sup> We note that respondent, in his brief on appeal, offers nothing more than speculation that his counseling failed because of a language barrier, and general allegations that some nonspecific prejudice resulted from the absence of an interpreter at all stages of the proceedings. We further note that respondent provided no specific examples of allegedly confusing or conflicting advice he received from foster care workers that the alleged language barrier might have exacerbated. Significantly, we note that respondent testified to a language barrier when advised the psychological report contained an admission by respondent that the minor child had been slapped and spanked. Respondent denied any such statement, concluding that the doctor lied and had a problem with the language.

management and parenting classes. More than two hundred days had elapsed between entry of the January 2000 dispositional order and the August 2000 filing of the supplemental petition to terminate respondent's parental rights.

During this period, respondent made no progress toward addressing his management of anger or improving his parenting skills as required by the order of disposition. The record contains abundant evidence that respondent consistently denied to foster care workers that he had any problems that needed treatment. The testimony of respondent's therapist likewise indicated that respondent consistently denied the existence of any problems in his household, instead blaming petitioner for wrongfully removing the child. Consequently, respondent made no progress toward recognizing any shortcomings in his anger management or parenting skills. At the termination hearing, respondent characterized himself as a good father and continued to deny having any problems. While respondent never missed a scheduled visit with the child, the testimony of several foster care workers agreed that respondent made little to no improvement of his parenting skills during the visits. The record additionally reflects that, in May 2000, the police again arrested respondent for domestic assault, which respondent failed to bring to petitioner's attention as the court had ordered.

Furthermore, we cannot characterize as clearly erroneous the trial court's finding that the record clearly and convincingly established that respondent could not remedy his parental shortcomings within a reasonable time given the child's age in light of: (1) respondent's total denial of and refusal to address any problems; (2) the fact that the child displayed serious developmental delays when he arrived in foster care (the child had a limited vocabulary, lacked socialization skills, and could not feed, dress, or go to the bathroom himself); (3) the fact that the child had made significant developmental improvements since arriving in foster care but still required therapy to develop more age appropriate socialization and verbal skills. The child needed parental attention that respondent plainly expressed no inclination even to attempt to provide. See *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (indicating that a "reasonable time" under MCL 712A.b(3)(c)(i) should take into account both "how long it would take respondent to improve [his] parenting skills, but also on how long [his] ... child[] could wait for this improvement").<sup>5</sup>

We further find no clear error in the trial court's determination that termination of respondent's parental rights served the child's best interests. MCL 712A.19b(5). Although respondent expressed love for the child and at least one foster care worker believed that love existed between the child and respondent, the testimony also reflected the lack of interaction or a strong parent-child bond between respondent and the child. The child did not express to his foster family or the foster care workers that he missed respondent, repeatedly voiced a desire not to attend visits with respondent, during visits became limp and unresponsive or hid and often resisted contact with respondent, and verbalized more and otherwise behaved more age appropriately when outside respondent's presence. Although the child continued to suffer verbalization and socialization difficulties at the time of the termination hearings, the child had

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<sup>5</sup> Because the record clearly and convincingly established the propriety of the trial court's termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), we need not address the alternate statutory ground cited by the trial court, MCL 712A.19b(3)(j).

achieved dramatic improvements since his removal from respondent's care. In light of this evidence, we cannot characterize as clearly erroneous the trial court's finding that "the sooner we get this child in a nurturing, supporting, loving, consistent, predictable, appropriate home environment on a permanent basis, the better off this child's going to be, and there is no prospect for that happening with these parents." *In re Trejo, supra*.<sup>6</sup>

Respondent further asserts that his counsel rendered ineffective assistance by failing to demand the presence of a psychologist whose evaluation of the child the trial court considered in its decision to terminate respondent's parental rights. The psychological evaluation characterized the child's home environment with respondent as very damaging. Although respondent correctly cites MCR 5.974(F)(2) for the proposition that he had the right to cross-examine the psychologist regarding his written evaluation of the child, the record contains respondent's explicit waiver of his right to cross-examine the psychologist. While the record reflects that it took respondent's counsel and the trial court some time to elicit the waiver because respondent apparently took this opportunity to air complaints regarding the fact that the child saw no doctors for more than a year, respondent eventually and explicitly waived his right to demand the psychologist's presence at the termination hearing. Because the record reflects that respondent's counsel advised him of his right to call the psychologist as a witness and that respondent ultimately, understandingly waived that right, we find that respondent has waived appellate review of this issue. *People v Riley*, 465 Mich 442, 448-449; 636 NW2d 514 (2001).<sup>7</sup>

Lastly, respondent claims that the trial court's scheduling of termination hearings well beyond the time periods set forth in MCR 5.974(F)(1)(b) violated his due process rights and warranted the court's dismissal of the termination petition. We disagree. Whether the Michigan Court Rules authorize the dismissal of a termination petition because of undue delay in scheduling a termination hearing constitutes a legal question that this Court reviews de novo. *In re TC*, 251 Mich App 368, 370; 650 NW2d 698 (2002).

This Court has expressed repeatedly that the mere failure of the trial court to adhere to the timing requirements of MCR 5.974(F) and (G) does not constitute a basis for vacating an order terminating a respondent's parental rights, because these rules provide no sanction for their violation. *In re TC, supra*; *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993); *In re Pardee*, 190 Mich App 243, 252; 475 NW2d 870 (1991). In *In re TC, supra*, this Court, citing

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<sup>6</sup> We briefly note that respondent cites no authority for the proposition that petitioner should have interacted with him and the child's mother separately, and that respondent likewise fails to present authority supporting his suggestion that petitioner had some obligation to document his treatment plan noncompliance by filing a show cause motion. *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000) (noting that a party may not leave it to this Court to search for authority to sustain or reject his position). We also note that the record does not substantiate respondent's further suggestion that certain foster care workers acted on some bias against him.

<sup>7</sup> Even assuming that respondent's counsel should have demanded the psychologist's appearance, we note that counsel's failure to do so did not prejudice respondent. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). Although the psychological evaluation certainly did not reflect well on respondent's parenting of the child, the record already contained abundant testimony by several foster care workers regarding the child's severe developmental delays at the time he arrived in foster care.

MCR 5.902(A) and MCR 2.613(A), explained that the trial court's failure to comply with MCR 5.974(G) did not represent a basis for dismissing a termination petition unless the involved delay qualified as inconsistent with substantial justice.

Respondent suggests that he suffered prejudice arising from the periods of delay during which petitioner offered him no opportunity to participate in services or to prove his good relationship with the child during visitation periods. However, in light of respondent's well-documented failures to make any effort to participate in the therapy that petitioner facilitated or to significantly improve his parenting skills during the many visitation periods petitioner did provide, we cannot conclude that the occurrence of the termination hearings beyond the periods prescribed by MCR 5.974(F) resulted in a substantial injustice to respondent. *In re TC, supra*. We also reject respondent's further suggestion that the delays deprived him of due process, because he was afforded a full hearing and an opportunity to be heard before the trial court ordered termination of his parental rights. *In re Kirkwood*, 187 Mich App 542, 546; 468 NW2d 280 (1991).

Affirmed.

/s/ William C. Whitbeck

/s/ Harold Hood

/s/ Kirsten Frank Kelly