

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SARAI KASHAUN WALLACE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TRELLIS JOHNSON,

Respondent-Appellant,

and

BRUCE WALLACE, JR.,

Respondent.

UNPUBLISHED

January 27, 2009

No. 287621

Saginaw Circuit Court

Family Division

LC No. 07-030941-NA

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Respondent Trellis Johnson appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent's sole claim on appeal is that the trial court violated her right to counsel by failing to honor her request for counsel at earlier hearings. This issue has not been properly preserved for appeal because respondent did not raise it below. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007). Therefore, the issue is reviewed for plain error. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

A respondent in child protective proceedings has a due process right to counsel. *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353, n 10; 612 NW2d 407 (2000). That right is also guaranteed by statute and court rule. MCL 712A.17c(5); MCR 3.915(B)(1). At the respondent's first court appearance, the court must advise her of the right to retain counsel to represent her at any hearing and that she has the right to court-appointed counsel if she is financially unable to retain counsel. MCL 712A.17c(4); MCR 3.915(B)(1)(a). The court must appoint an attorney for the respondent if she requests appointment of counsel and shows, through written financial records or otherwise,

that she is financially unable to retain an attorney. MCL 712A.17c(5); MCR 3.915(B)(1)(b). The respondent may also waive the right to counsel. MCL 712A.17c(6); MCR 3.915(B)(1)(c).

Respondent was sent notice of the April 5, 2007, preliminary hearing on March 23, 2007. The notice advised her of her right to counsel and stated:

If you desire to employ an attorney, you should do so immediately in order that s/he may be ready at the hearing date. If you are financially unable to employ an attorney, you must notify the court immediately upon receipt of this notice.

Respondent appeared at the hearing without counsel. The trial court advised her of her right to counsel and asked whether she wanted to proceed without counsel. Respondent replied, "Yes." She thus waived her right to counsel for the preliminary hearing. Although respondent also indicated an intent to retain counsel, but also said that she would not be able to hire an attorney, she never asked the court to appoint counsel for her, and the court is not required to appoint counsel for an indigent respondent except upon request. MCR 3.915(B)(1)(b)(i). As this Court has recognized, the court rule "requires affirmative action on the part of a respondent in order to have an attorney appointed" for her. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). Respondent has thus failed to show plain error.

Respondent was personally served with notice of the May 17, 2007, trial on April 10, 2007. The notice contained information similar to that in the notice for the preliminary hearing regarding the right to counsel. Respondent made an unsuccessful attempt to secure appointed counsel before the hearing, but it is not clear why the attempt failed. Respondent appeared for trial without counsel. When questioned, respondent stated that she wanted an attorney. Although the court was bothered by the fact that respondent's request was not timely made, it did state that it was willing to honor her request for counsel. Before the court could proceed, however, respondent waived her right to counsel, stating, "I'm gonna go ahead without an attorney today." Respondent has thus failed to show plain error. Moreover, any potential error was harmless, given that counsel was subsequently appointed for respondent and represented her at all subsequent hearings, including the termination hearing. *In re Hall, supra* at 222-223.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra