

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of INDIA BRIANN COLEMAN,
SHAVONNE KALSHAE COLEMAN, JAE LAN
RASHAD COLEMAN, and TAJAH LEE
COLEMAN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GARY LEE COLEMAN,

Respondent-Appellant.

UNPUBLISHED
February 24, 2009

No. 287191
Wayne Circuit Court
Family Division
LC No. 07-462929-NA

Before: Whitbeck, P.J., and O’Connell and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (h). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent first claims that the trial court violated his due process rights when it failed to secure his presence at a number of hearings, as required by MCR 2.004. We review respondent’s unpreserved claim for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

MCR 2.004(F) requires that the trial court offer an incarcerated parent the opportunity to participate in child protection proceedings by telephone unless “the court determines that immediate action is necessary on a temporary basis to protect the minor child.” In this case, respondent initially declined to participate in the proceedings, signing a waiver stating that he did not wish to participate in a telephone conference, did not wish to plan for the children, understood that he would not receive further notice of hearings or be appointed an attorney, and understood that he could permanently lose his parental rights. The first indication that respondent had “changed his mind” came at the adjudicatory hearing, when the prosecutor informed the court that respondent wished to participate. Attempts at contacting respondent by telephone were unsuccessful, and the matter proceeded in his absence.

The children had been in the care of their mother, against whom allegations of abuse and neglect had been made. Pursuant to *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002), because the family court's jurisdiction is tied to the children, a trial court may assert jurisdiction over a child based on findings made against only one parent. Respondent fails to demonstrate how his presence at the adjudication hearing would have affected the outcome. The evidence against the mother allowed the trial court to assert its jurisdiction over the children.

Respondent also argues that he was wrongfully denied the right to be present at the dispositional hearing in which the treatment plan for both parents was adopted. Again, respondent fails to demonstrate how his presence would have affected the proceedings, because he was imprisoned and unable to participate in reunification services. Finally, respondent argues that he was wrongfully denied the right to be present at the pre-trial hearing, and he contends that his counsel could not waive his right to a jury trial. However, respondent had no right to a jury trial for the termination hearing. MCR 3.911(A); *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993).

Next, respondent argues that the trial court deprived him of his fundamental right to counsel by failing to appoint counsel until the second dispositional review hearing.¹ Again, the trial court was not required to conduct an adjudicative hearing for each respondent; because jurisdiction was attached to the children, no separate hearing was necessary to protect respondent's interest. *In re CR*, *supra*. The mother was the custodial parent against whom allegations of abuse and neglect had been made, and the evidence presented at the adjudicative hearing concerned her allegedly abusive and neglectful actions, as well as the actions of her live-in boyfriend. It was clear that the trial court would have adjudicated the children temporary wards even if respondent were represented by counsel.

This Court has also employed the "harmless error" analysis to determine if a parent's deprivation of counsel during a critical stage of a termination proceeding requires reversal of the termination order. *In re Hall*, 188 Mich App 217, 222-223; 469 NW2d 56 (1991). Respondent was not harmed by a lack of representation during certain stages of the proceedings. Respondent was represented by counsel during the termination hearing, and it was at this hearing that evidence was presented establishing that respondent had been in prison since 2000 and would be released, at the earliest, in 2015, that he was in no position to care for the children and offered no alternative for their care, and that a strong bond did not exist between him and the children.

Finally, respondent argues that he was denied the effective assistance of counsel. Because respondent failed to move for an evidentiary hearing, our review is limited to mistakes apparent on the record. *People v Marcus Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Generally, to establish ineffective assistance of counsel, a respondent must show that "(1) counsel's performance was below an objective standard of reasonableness under professional norms, and (2) there is a reasonable probability that, if not for counsel's errors, the result [of the

¹ Because respondent also failed to preserve this issue, we will review it for plain error. *Carines*, *supra* at 763-764.

proceedings] would have been different and the result that did occur was fundamentally unfair or unreliable.” *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Respondent claims that his counsel failed to advise him that he could seek alternative placement for the children, but the record does not support his claim. The children had been placed with their maternal aunt. Respondent previously indicated that he was pleased with the placement and even supported the idea of establishing a guardianship in her favor. Respondent never indicated that a viable alternative placement existed. Respondent also complains that his counsel was ineffective for proceeding with the pre-trial in his absence and failing to advise him that he had a right to a jury trial. However, respondent did not have a right to a trial by jury at the termination hearing. MCR 3.911(A). Finally, respondent claims that his counsel was ineffective for failing to raise the claim that his due process rights were violated when he was not made available by telephone for many of the proceedings, as is required by MCR 2.004. However, as discussed above, there was no violation of respondent’s due process rights.

The record is simply devoid of any evidence that respondent was denied the effective assistance of counsel. At the termination hearing, counsel cross-examined the witnesses regarding their failure to facilitate visits with respondent and cross-examined the worker regarding her failure to make any attempt to offer respondent services. This was all counsel could do in light of the evidence in favor of termination.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O’Connell
/s/ Donald S. Owens