STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DYLAN MICHAEL CASEY-MARTIN and ZACHARY JOHN CASEY-MARTIN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RODNEY LEE CASEY,

Respondent-Appellant,

and

BRANDI MARTIN,

Respondent.

UNPUBLISHED
March 12, 2009

No. 286907
Montcalm Circuit Court
Family Division
LC No. 2007-000301-NA

In the Matter of DYLAN MICHAEL CASEY-MARTIN and ZACHARY JOHN CASEY-MARTIN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRANDI MARTIN,

Respondent-Appellant,

and

RODNEY LEE CASEY,

Respondent.

No. 286908
Montcalm Circuit Court
Family Division
LC No. 2007-000301-NA

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g), and (j). Respondent-mother appeals from the trial court order terminating her parental rights pursuant to MCL 712A.19b(3)(a)(ii), (b)(ii), (c)(i), (g), and (j). We affirm.

On appeal, respondents do not challenge the trial court's findings that petitioner proved the statutory grounds for terminating their parental rights. Rather, respondent-father argues that the trial court erred in denying him the right to be present at the permanent custody hearing and that petitioner failed to provide him services. Respondent-mother argues that her parental rights were prematurely terminated because a treatment plan was not effectuated in a timely manner, and the court erred in failing to coordinate her treatment plan with the state of Florida. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the child(ren). MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

Respondent-father's issues on appeal (Docket No. 286907)

Respondent-father argues that the trial court's decision denying his request for an adjournment of the permanent custody hearing while he was detained in the county jail, which prevented him from being present, was error requiring reversal that violated his due process rights.

The grant or denial of a motion to adjourn is within the discretion of the trial court. *In re Krueger Estate*, 176 Mich App 241, 247-248; 438 NW2d 898 (1989). The trial court did not abuse its discretion in denying respondent-father's request for an adjournment. MCR 3.973, which governs dispositional hearings like permanent custody hearings, states that "the respondent has the right to be present or may appear through an attorney," MCR 3.973(D)(2), and the trial court "may proceed in the absence of parties provided that proper notice has been given." MCR 3.973(D)(3). MCR 3.973(D)(2) prohibits the trial court from denying a respondent's right to attend the hearing, but does not require the trial court to secure the respondent's physical presence at the dispositional hearing of a proceeding to terminate parental rights. *In re Vasquez*, 199 Mich App 44, 49; 501 NW2d 231 (1993). Generally, the trial court may hold the hearing in the respondent's absence if he received proper notice. MCR 3.973(D)(3). In the present case, respondent-father did not dispute that he was personally served with notice, and the court did not deny respondent-father's right to be present. Additionally, respondent-father did not prioritize attendance at any of the previous court hearings because he never appeared for any of the hearings prior to his incarceration.

Respondent-father argues that due process entitled him to be present for the permanent custody hearing because he was incarcerated and unable to appear. This Court considers de novo the legal question of "whether constitutional due process . . . has been satisfied." *Reed v Reed*,

265 Mich App 131, 157; 693 NW2d 825 (2005). To determine when the court is obligated to assure a parent's presence at a court hearing so as not to violate due process guarantees, this Court applies the three-part balancing test set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976), which balances the private interest at stake, the risk of an erroneous determination in the absence of the parent's physical presence, and the government's interest in avoiding the burden of physically producing the parent for the termination hearing. *Vasquez supra*.

By applying the *Mathews* balancing test in the instant case, it is unlikely that the risk of an erroneous deprivation was increased by respondent-father's absence because termination of his parental rights was based on his failure to comply with his treatment plan, address his mental health issues, provide suitable housing, and demonstrate parental fitness. Although a further adjournment for respondent-father's testimony may not have been an onerous burden on the trial court, when considered in light of the minimal likelihood that such testimony could have altered the outcome of the trial, the denial of the request for adjournment did not constitute a denial of due process. And, although one adjournment for an absent parent in one case may not have burdened the court, the court would be burdened if it were obligated to adjourn every time a parent was absent. Accordingly, the failure to adjourn the proceedings did not deprive respondent of any constitutional right.

Considering that respondent-father was represented by counsel at all hearings, that he failed to appear for any of the court hearings throughout the case, and that he made no effort to contact his attorney or the trial court throughout the case despite having received proper notice, it was harmless error for the court to proceed in his absence. More importantly, sufficient independent evidence supported the trial court's termination of respondent-father's parental rights, and his participation in the hearing would not have affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Any constitutional error was not decisive to the outcome, and this Court does not reverse on the basis of harmless error. *In re Gazella*, 264 Mich App 668, 675; 692 NW2d 708 (2005); see also MCR 2.613(A).

Additionally, the decision to adjourn is within the court's discretion, and should only be granted for good cause, after taking into account the children's best interests, and for as short a time as possible. MCR 3.923(G). In this case, respondent-father was arrested the day before the permanent custody hearing and neither the court nor petitioner knew of his incarceration until the morning of the hearing. And, although respondent-father was detained and unavailable to attend the hearing, refusing to disturb the termination order was not inconsistent with substantial justice. MCR 2.613(A) provides:

> An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

Given that the trial court found five separate statutory bases to terminate respondent-father's parental rights, reversal of the court's order would be inconsistent with substantial justice.

Respondent-father also argues that petitioner failed to provide him services. However, his contention is contrary to the trial court's record, which shows that petitioner's difficulties in

facilitating services were due to respondent-father's lack of efforts. The caseworker informed respondent-father of her efforts to contact him so they could meet to review his treatment plan and look into parenting time, which was suspended due to his lack of participation. The caseworker eventually met with respondent-father on March 18, 2008, and sent him a letter informing him where he could find parenting classes. She also provided him information so that he could obtain a psychological evaluation, but respondent-father never followed through. When petitioner's service providers came to his house, respondent-father was never home or available for random drug screens. And, when the caseworker attempted a scheduled visit on April 2, 2008, respondent-father's house appeared to have been vacated. The CPS worker tried to contact respondent-father again at home after April 3, 2008, but was unable to locate him or contact him through his cell phone. Although respondent-father indicated his willingness to participate in the treatment plan, he made no efforts to do so. Also, respondent-father was dishonest with the caseworker, stating that he did not have a criminal or CPS history, even though he had both a criminal record and prior CPS involvement.

Respondent-father also argues that his inability to read or write was not accommodated by petitioner's services. His assertion is contrary to the evidence on the record. On April 2, 2008, when the caseworker learned of respondent-father's limitations, she offered to link him with literacy resources in the area. However, respondent-father refused literacy services, claiming that he could rely on his girlfriend to help him. Respondent-father even contacted the caseworker after receiving her letter, thereby demonstrating that his inability to read did not prevent him from responding to her letters or participating in a treatment plan. Thus, respondent-father's claim that petitioner failed to provide him services or meet his special needs is without merit.

Moreover, respondent-father has not provided legal authority to establish that the petitioner's failure to make reasonable efforts alone establishes a basis for relief. MCL 712A.18f(4). Rather, the absence of reasonable efforts by the petitioner has only been relevant to assessing whether the statutory grounds for termination were established. See, e.g., *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). Contrary to respondent-father's assertion, he was offered services, but failed to take advantage of the services offered to him. Moreover, the court did not clearly err in terminating respondent-father's parental rights under five statutory bases, none of which was due to petitioner's failure to offer him services.

Respondent-mother's issues on appeal (Docket No. 286908)

Respondent-mother argues that the four-month delay occurring in between Dylan's and Zachary's removal and the formulation of her treatment plan resulted in her inability to participate in services and work toward her children's return. Although the children were placed in protective care on July 25, 2007, and the court ordered adoption of the initial service plan did not occur until disposition on October 15, 2007, respondent-mother failed to explain how the delay unfairly prejudiced her case or interfered with her ability to comply with her treatment plan. "A party may not merely announce his position and leave it to [this Court] to discover and rationalize the basis for his claim." *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

Because adjudication was held on July 26, 2007, following the preliminary hearing, disposition occurred earlier than it would have had the case proceeded on a standard schedule with the pretrial hearing and adjudication occurring on separate dates following the preliminary hearing. Also, respondent-mother never expressed dissatisfaction with progress of her case by

contacting the caseworker to begin working on her treatment plan, seeking out services independently, or requesting an earlier court date. And, because disposition occurred two-and-a-half months after adjudication, respondent-mother was given the benefit of additional time to address her issues but still failed to make significant strides in meeting the requirements of her treatment plan for nine months.

Respondent-mother also argues that the trial court had a duty to fashion a treatment plan that could be coordinated between Michigan and Florida, the state where she lived. She further argues that petitioner was obligated to develop a treatment plan that would best meet the needs of the parents with the goal of reunification. However, respondent-mother failed to provide authority for her argument. See *In re Toler, supra* at 477.

A trial court may modify the requirements of a case service plan. MCL 712A.19(7); MCR 3.975(G)(4). The use of the term "may" signifies a discretionary provision; therefore, the trial court's decision is reviewed for an abuse of discretion. *Mollett v City of Taylor*, 197 Mich App 328, 339; 494 NW2d 832 (1992); *In re Humphrey Estate*, 141 Mich App 412, 423; 367 NW2d 873 (1985). MCL 712A.13(a)(12) and MCR 3.965(E)(4) authorize the court to modify treatment plans as is in the juvenile's best interests upon the request of any party. Contrary to respondent-mother's assertion, petitioner had a duty to create a treatment plan tailored to meet the *family's* needs. MCL 712A.18f(3); MCL 712A.19(7); *In re Trejo Minors*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000). Petitioner complied with its duty, but respondent-mother chose to leave the state, never made a motion requesting modification of the treatment plan, and failed to maintain contact with the caseworker. Moreover, when determining how to modify the case service plan, the court's focus should be placed on the children's best interests and not a parent's convenience.

The trial court accommodated respondent-mother's move to Florida by modifying the treatment plan to allow her substance abuse treatment in a location other than Michigan, but respondent-mother failed to comply with the treatment plan by seeking substance abuse treatment or demonstrating that she was drug free since moving to Florida. Respondent-mother voluntarily compromised her ability to participate in the case service plan in Michigan by moving out of state without communicating her decision to petitioner or making an effort to coordinate services before leaving. She also failed to leave her contact information with the caseworker who was unable to locate her and thus unable to coordinate services. The caseworker did not learn of respondent-mother's whereabouts in Florida until Medicaid flagged her case, and neither respondent-mother nor her caseworker in Florida was responsive to requests for information. Thus, given the history of the case and respondent-mother's lack of efforts, the trial court did not abuse its discretion by not modifying the case service plan to coordinate with services in the state of Florida.

Affirmed.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shapiro