

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

January 20, 2011

In the Matter of J. G. Reid, Minor.

No. 298059

Ingham Circuit Court

Family Division

LC No. 00-021206-NA

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Before: MURPHY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

I. DISQUALIFICATION OF REFEREE

Respondent argues that the referee who presided over the preliminary hearing should have been disqualified because he had represented her in a prior child protection proceeding involving the same child. We disagree.

Generally, the determination whether proceedings complied with a party's right to due process presents a question of constitutional law that this Court reviews de novo. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). However, because respondent never requested the referee's disqualification in the trial court,<sup>1</sup> or later argued that she was prejudiced by the referee's limited participation at the preliminary hearing, this issue is not preserved. We review unpreserved issues for plain error affecting a party's substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

Disqualification of a judge is governed by MCR 2.003(C)(1), which provides, in pertinent part:

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<sup>1</sup> Respondent makes vague allegations regarding improper notice of the preliminary hearing, but, significantly, she does not raise the notice issue as a separate issue on appeal. The referee stated at the preliminary hearing that "reasonable efforts have been made to give [respondent] notice."

(1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

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(c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(d) The judge has been consulted or employed as an attorney in the matter in controversy.

(e) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

In this case, the referee who presided at the preliminary hearing previously represented respondent in a child protection proceeding that began in 2004 and concluded in June 2006. The instant proceeding was initiated in August 2009, beyond the two-year period where disqualification was mandatory under MCR 2.003(C)(1)(e). The record does not reflect any other basis for disqualification, such as facts supporting the application of MCR 2.003(C)(1)(c) or (d). The referee's decision to authorize the petition at the preliminary hearing was based on the relevant facts of the case. Moreover, despite the request for termination at the initial dispositional hearing, the referee ordered petitioner to provide respondent with services. More significantly, the participation of the referee in question was limited to the preliminary hearing. The referee did not preside at the subsequent hearings, including the termination hearing. Under these circumstances, respondent has not demonstrated either a plain error or shown that her substantial rights were affected because of the referee's limited participation at the preliminary hearing.

## II. REASONABLENESS OF PETITIONER'S EFFORTS

Respondent next argues that the trial court erred in terminating her parental rights because petitioner failed to make reasonable efforts to reunify her with the child. Although respondent argued that termination was premature, she did not raise an issue challenging the adequacy of services. Accordingly, this issue is not preserved and our review is limited to ascertaining whether plain error occurred that affected respondent's substantial rights. *Wolford*, 279 Mich App at 637.

"Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

We agree that there was no finding that aggravated circumstances existed to excuse petitioner from making reasonable efforts to rectify the conditions that caused the child's removal. Contrary to respondent's argument, however, the record reflects that the necessary efforts were made. Although petitioner requested termination at the initial dispositional hearing, more than seven months elapsed between the filing of the initial petition and termination of

respondent's parental rights. In the interim, petitioner was ordered to provide services to respondent. The evidence shows that respondent was provided with a case service plan and that petitioner made referrals for several services, including mental health referrals to St. Vincent's and IMPACT, a drug assessment and screens, parenting classes, and supervised visitation. Respondent participated in the drug assessment, but failed to follow through with the treatment recommendations. She did not participate in the parenting classes. She also failed to comply with the drug-screen requirements and, as a result, was unable to participate in the supervised visitation. Additional services were not provided because respondent failed to comply with the initial services that were offered. Thus, there is no merit to respondent's argument that petitioner failed to make reasonable efforts to rectify the conditions that caused the child's removal.

### III. TERMINATION OF PARENTAL RIGHTS

Lastly, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCL 712A.19b(3). The conditions that led to the child's adjudication were respondent's substance abuse and failure to properly parent or supervise the child. This case represented the second time that the five-year-old child had been removed from respondent's care because of her substance-abuse issues. Respondent frequently left the child unsupervised or with people she hardly knew, placing him at a substantial risk of harm. Respondent only minimally participated in services, failed to follow through with the drug-assessment recommendations, and failed to comply with the court-ordered drug screening. As a result, she had no visitation with the child after he was removed from her care. The trial court did not clearly err in finding that respondent failed to provide proper care for the child and that there was no reasonable expectation that she would be able to do so within a reasonable time. In addition, considering respondent's continued unwillingness to address her substance abuse problem, and her history of lack of supervision, there was a reasonable likelihood that the child would be harmed if returned to respondent's home.

Affirmed.

/s/ William B. Murphy  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher