

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 27, 2011

In the Matter of S. J. BORDEAUX, Minor.

No. 297751

Kent Circuit Court

Family Division

LC No. 08-054480-NA

Before: SAWYER, P.J., and WHITBECK and WILDER, JJ.

MEMORANDUM.

Respondent appeals by right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). This appeal has been decided without the benefit of the prosecutor's brief. We reverse and remand this case for further proceedings consistent with this opinion.

The conditions of adjudication that pertained to respondent were that he was incarcerated for domestic violence against the child's mother, and he and the mother had repeated domestic violence issues that required intervention from Children's Protective Services (CPS).¹ Respondent remained incarcerated throughout these proceedings.

The termination of respondent's parental rights occurred before the Supreme Court released its opinion in *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). In *Mason*, the Court clarified that an incarcerated parent must be afforded the right to participate in each proceeding in a child protective action, pursuant to MCR 2.004, and that he or she must be offered a service plan with appropriate review and updates. The record shows that respondent was not present in person or by telephone for two review hearings and was not offered the opportunity to participate. The *Mason* Court made it clear that participation in some hearings is not sufficient to satisfy the requirements of MCR 2.004, which provides that the incarcerated parent must be given the opportunity to participate in "each proceeding." *Id.* at 154-155.

The record further shows that respondent was not offered a service plan, he was not offered or referred to any services, and petitioner did not consider respondent's voluntary

¹ The couple divorced in 2006, but respondent lived close to the mother and her two children. The mother relinquished her parental rights to both children at the beginning of the termination hearing.

participation in services offered by the prison while incarcerated. As in *Mason*, petitioner “disregarded respondent’s statutory right to be provided services and, as a result, extended the time it would take him to comply with the service plan upon his release from prison.” *Id.* at 159. In this case, respondent’s prison term ended 70 days after the termination order was entered. Because respondent was offered no opportunity to work toward reunification with his child before his parental rights were terminated, there was no evidence to support the trial court’s finding that respondent would not be able to rectify the conditions of adjudication or provide proper care and custody for his child within a reasonable time considering the child’s age. MCL 712A.19b(3)(c)(i) and (g). The trial court clearly erred in finding these statutory grounds proven. MCR 3.977(K).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Kurtis T. Wilder