

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
December 1, 2011

In the Matter of H.R. LEE and B.J. LEE, Minors.

No. 303124  
Wayne Circuit Court  
Family Division  
LC No. 10-491966

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Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to the minor children under MCL 712A.19b(3)(b)(i), (g), (h), (k)(ii), and (n)(i). For the reasons set forth below, we affirm.

Respondent was convicted of second-degree criminal sexual conduct against his seven-year-old daughter. He concedes that the statutory grounds supported termination of his parental rights, but argues that the trial court erred in finding that termination is in the best interests of the children. According to respondent, the children are bonded to him and their guardianship with his mother during his lengthy period of incarceration removes any potential risk of harm posed by preserving his parental rights. He further argues that the trial court violated his right to due process by conducting the combined preliminary hearing/permanency planning hearing without notifying him or attempting to secure his presence.

I. BEST INTERESTS OF THE CHILDREN

The record reflects that the trial court correctly ruled that termination of respondent's parental rights is in the best interests of the children pursuant to MCL 712A.19b(5), which provides:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

A trial court may base its best interests finding on evidence found within the whole record. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent claims that the evidence showed he was a good father and he and the children had a strong bond. Three witnesses testified to respondent's ability to parent the children in 2005-2006, but the evidence also

showed the trial court established a guardianship for the children with respondent's mother in 2009 due in large part to respondent's alcoholism. The evidence also showed the parent-child bond respondent had with HL was violated when he sexually abused her, and respondent does not contest on appeal the trial court's finding under § 19b(3)(n)(i) that preserving a parent-child bond would be harmful.

Respondent also argues that terminating his parental rights was against the children's best interests because it would prevent the children from inheriting from him should he die intestate. However, if respondent desires to bequeath assets to the children, he may do so through a will.

Respondent further contends that terminating his parental rights was unnecessary because the children remain under guardianship with his mother and he expects to be incarcerated until the children reach the age of majority, thereby protecting the children from any potential harm posed by preserving his parental rights. Respondent claims to support the children's guardianship, but his mother testified her relationship with respondent is "toxic" and she does not intend to have contact with him after his release from prison. Moreover, the children will not have reached their teen years if respondent is freed on his earliest possible release date, and preserving respondent's parental rights also preserves his ability, while incarcerated and after release, to petition the trial court regarding the children's guardianship. Given the nature of respondent's actions against HL and in light of the statutory provisions set forth by the Michigan Legislature for completely severing the parent-child relationship in such an instance,<sup>1</sup> respondent should not be allowed to participate in future decisions regarding the children's stability and permanence.

## II. DUE PROCESS

Respondent complains that the trial court violated his due process right to meaningfully participate in the proceeding by failing to notify him of the January 22, 2010 combined preliminary hearing and conducting it in his absence. Due process in civil cases generally requires notice of the nature of the proceedings, and an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). Respondent did not preserve this argument for appeal and therefore must show that plain error occurred affecting his substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). An error affects substantial rights if it causes prejudice, meaning that it affects the outcome of the proceedings. *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008).

The trial court combined the preliminary hearing with the permanency planning hearing on January 22, 2010 and the record is unclear whether respondent was served with notice of the hearing.<sup>2</sup> However, remand for a determination of the issue is unnecessary because, were we to

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<sup>1</sup> MCL 722.638(1)(a)(ii) and (2). MCL 712A.19b(3)(n).

<sup>2</sup> The January 22, 2010 Ready for Trial in the lower court record shows a box checked indicating personal service on respondent at the county jail, but it is unclear whether the Ready

assume that respondent did not receive notice and did not have a meaningful opportunity to participate, he fails to show his absence from the hearing prejudiced the outcome of the proceeding. Respondent was represented by counsel at the hearing, he does not identify what additional information he would have provided had he been present, and he was given a full opportunity at the adjudication trial and best interests hearings to testify, cross-examine witnesses, and present relevant evidence. The trial court did not commit plain error requiring reversal by failing to notify respondent of the combined preliminary hearing/permanency planning hearing and conducting it in his absence.

Respondent analogizes his case to *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), but respondent's absence at one hearing which did not affect the outcome of his proceeding differs markedly from respondent Mason's complete exclusion from his child protective proceeding for 16 months, in particular from the year-long review period during which the trial court would have evaluated his efforts at reunification. *Mason*, 486 Mich at 154-158. *Mason* is inapplicable to respondent's case.

Affirmed.

/s/ Michael J. Kelly  
/s/ Henry William Saad  
/s/ Peter D. O'Connell

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for Trial indicates the type of service respondent received for the January 22, 2010 hearing or the type of service he was to receive for the next hearing on February 16, 2010.