

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JOSHUA BIBBY, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TIMOTHY BIBBY,

Respondent-Appellant.

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UNPUBLISHED

September 14, 2006

No. 268183

Ionia Circuit Court

Family Division

LC No. 01-000111-NA

Before: Sawyer, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii) and (k)(i). We affirm.

Respondent first contends that the trial court erred in finding a reasonable attempt to give notice of the preliminary hearing under MCR 3.965(B)(1). We agree, but find no error requiring reversal. The notice attempt was a phone call to respondent's father in Florida, one hour before the hearing. This did not comport with the requirement of a reasonable attempt to notify the parent in MCR 3.965(B)(1). However, while petitioner's effort was not sufficient, the error was harmless. The child had been living with respondent's mother, Kelly Robach, under a power of attorney that was believed to have expired. Having left Joshua with Ms. Robach, it was extremely unlikely that respondent would return to Michigan from Florida for a preliminary hearing that would have no practical effect on the child's placement or well being. Further, respondent's parental rights were not in jeopardy at the preliminary hearing, and his visitation rights were apparently not important to him, since he had not seen the child in a year. The parent agency agreement and initial service plan were sent to him and discussed over the phone with the caseworker. In short, respondent lost virtually nothing by not being able to participate in the preliminary hearing. Any error did not affect his substantial rights, and allowing the order following the preliminary hearing to stand would not be inconsistent with substantial justice. MCR 2.613(B).

Second, respondent argues that the trial judge should have disqualified himself where he prosecuted respondent several times while employed by the law firm that represented the City of Ionia. Respondent sought disqualification under MCR 2.003(B)(1) (actual bias or prejudice) and (B)(4) (prior involvement as attorney for a party). We find no error in the denial of

disqualification on these grounds. First, the trial judge correctly found that his prosecution of ordinance violations for the City of Ionia was not representation "of a party" within the meaning of MCR 2.003(B)(4), because Ionia was not a party to the instant proceeding. The judge apparently accepted respondent's suggestion that one of the cases occurred within the last two years and that the judge was personally involved in the prosecution. See *People v Delongchamps*, 103 Mich App 151, 156; 302 NW2d 626 (1981). However, the judge did not recall the facts of this or other cases involving respondent. Under subrule (B)(1), respondent suggested, as evidence of bias, the judge's statements that the judge would "see [respondent] again," and that respondent was "the type of person that is in and out of [court, apparently] all the time." These unsworn remarks, even if accurately recalled by respondent, do not show personal bias or prejudice against him. There was no personality conflict or dislike of respondent caused by past personal or business dealings with him. Further, respondent did not request that the motion be referred to the chief judge once the trial judge declined to disqualify himself, as required by MCR 2.003(C)(3). We find no error.

Affirmed.

/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell