

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIFFANY ELIZABETH FEE,
NICOLE MARIE WILLIAMSON, and APRIL
MARIE WILLIAMSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARIE ANN WILLIAMSON, f/k/a MARIE ANN
FEE,

Respondent-Appellant,

and

KEVIN TOLLIVER and KEVIN JOE
WILLIAMSON,

Respondents.

UNPUBLISHED

August 21, 2008

No. 284044

Cass Circuit Court

Family Division

LC No. 06-000048-NA

In the Matter of TIFFANY ELIZABETH FEE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEVIN TOLLIVER,

Respondent-Appellant,

and

No. 284045

Cass Circuit Court

Family Division

LC No. 06-000048-NA

MARIE ANN WILLIAMSON, f/k/a MARIE
FEE,

Respondent.

In the Matter of NICOLE MARIE WILLIAMSON
and APRIL MARIE WILLIAMSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEVIN JOE WILLIAMSON,

Respondent-Appellant,

and

MARIE ANN WILLIAMSON, f/k/a
MARIE ANN FEE,

Respondent.

No. 284046
Cass Circuit Court
Family Division
LC No. 06-000048-NA

Before: Murray, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondents Marie and Kevin Joe Williamson appeal as of right the circuit court order terminating their parental rights to their minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), and respondent Kevin Tolliver appeals as of right the same order terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(a)(ii). We affirm.

Respondent Marie Williamson is the mother of the three children at issue in these appeals. Tiffany's legal father is respondent Kevin Tolliver (hereinafter "Tolliver"). Nicole and April were fathered by Marie's husband, Kevin Joe Williamson (hereinafter "Kevin"). The family's protective services history dates back to 2003 and includes several substantiated claims of neglect. During those prior proceedings, respondents Kevin and Marie were provided a multitude of services. Then, in February of 2006, another protective services referral was made when Nicole, then aged five, returned to school after being absent for more than a month because of head lice. Upon her return, Nicole was observed still to have live lice, eggs, and nits. The children were also found to be unkempt, wearing ill-fitting clothing and the same clothing for

several consecutive days. The CPS investigation revealed that the children were living with Marie and Kevin in the home of the maternal grandparents. None of the adults in the home were employed. The home had no food, the portion of the roof over the children's bedroom had a piece missing, and the children slept on a mattress with no bedding. A petition seeking temporary custody of the children was filed on March 2, 2006, and the children were removed from the care of Kevin and Marie.

Respondents Kevin and Marie argue that there was not clear and convincing evidence to support termination of their parental rights. MCR 3.977; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We disagree. The condition that caused the children to come into care was respondents' inability to provide proper care and custody due to their substance abuse, Marie's schizophrenia, and both parents' cognitive limitations. The evaluating psychologist, treating therapist, and foster care worker all concluded that respondents did not have the capability to safely and independently parent their children. Respondents lacked insight and foresight into the special needs of their daughters. They also minimized the effect that their own neglectful behavior had on the children. Because respondents could not recognize the needs of the children, they would be unable to satisfy those needs. The children had been severely traumatized by respondents' neglect and would be at risk of continued harm if returned to respondents' care. Under these circumstances, we conclude that the trial court did not err when it terminated respondents' parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Additionally, there was no evidence that, despite statutory grounds for termination, termination of parental rights would not be in the children's best interests. Indeed, because the children had been traumatized from the neglect in their lives, the evidence clearly demonstrated that immediate stability and permanency was imperative for their continued growth and development.

Respondent Tolliver raises four issues on appeal. We find no merit in any of the claims of error. Tolliver was incarcerated at the time of the termination hearing, awaiting trial in Indiana on criminal sexual conduct charges. He first argues that because no effort was made to secure his attendance at the termination hearing, he was deprived of his right to due process and equal protection. An incarcerated parent does not have the "absolute right to be present at the dispositional hearing." *In re Vasquez*, 199 Mich App 44, 48; 501 NW2d 231 (1993). Instead, this Court applies the three-part balancing test set forth in *Mathews v Eldridge*, 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976), to determine whether a trial court has to secure the physical presence of an incarcerated parent at the termination hearing. The *Mathews* balancing test requires the reviewing court to look at the private interest that will be affected by the official action, the likelihood of an erroneous deprivation, of such interest, and the probability that other procedures would protect that interest and the government's interest, which includes the fiscal and administrative burdens of a substitute procedure. *Mathews, supra* at 335.

This Court, with regard to the first factor, has declared that the private interest affected by parental termination hearings is a compelling one. *Vasquez, supra* at 47. With regard to the second factor, the likelihood of an erroneous deprivation was not increased by respondent Tolliver's absence at the termination hearing because his presence would not have changed the result. During the entire two years Tiffany was in care, Tolliver declined to participate in the proceedings. Moreover, even before the children came into care, Tolliver did not have contact with his daughter and did not provide for her support. Furthermore, respondent Tolliver was served with notice of the hearing a month before the termination hearing. He had ample

opportunity to request that the court secure his presence. Respondent Tolliver did not avail himself of any means to assert his presence in the case. This was consistent with his conduct throughout the matter.

Considering the final factor, the burden on petitioner to transfer respondent Tolliver from Indiana to Michigan, would have been higher than the risk of an erroneous deprivation in this case. There is no evidence that Tolliver requested to be present at the hearing. Had he wanted to provide evidence on his behalf, he could have testified via speakerphone. Under the circumstances, the trial court was not required to secure his attendance at the termination hearing. Accordingly, respondent Tolliver's absence at the hearing did not deny him due process or equal protection.

Next, respondent Tolliver argues that there was not clear and convincing evidence to support termination of his parental rights pursuant to MCL 712A.19b(3)(a)(ii). We disagree. Tolliver had not had any contact with Tiffany, who was 11 years old at the time of termination, since she was an infant. He was thousands of dollars in arrears in his child support payments. He did not attend any of the proceedings nor did he participate in services. Tolliver did not contact the caseworker to inquire into his daughter's well being nor did he request to see her. When contact was made with Tolliver, he stated that he did not believe Tiffany was his biological daughter. Despite being given one month's notice of the termination hearing, he did not do anything to participate in the process. Under these circumstances, the trial court did not err when it terminated respondent Tolliver's parental rights pursuant to MCL 712A.19b(3)(a)(ii).

Respondent Tolliver also argues that he was denied the right to assistance of counsel. The right to counsel in termination of parental rights cases requires affirmative action on the part of the respondent to trigger and continue the appointment of counsel. *In re Hall*, 188 Mich App 217, 218; 469 NW2d 56 (1991). In this case, Tolliver, despite being given notice several times over a nearly two-year period, failed to appear at any of the proceedings. He never requested the appointment of counsel. Therefore, we conclude that respondent Tolliver has failed to establish that he was denied the right to counsel.

Finally, respondent Tolliver contends that petitioner failed to make reasonable efforts to help him reunite with his daughter. The record does not factually support respondent's claim. Where services are provided, the petitioner need only offer reasonable services; it is under no duty to provide every conceivable service to work toward reunification. MCL 712A.18f(4). Initial services offered to Tolliver included a psychological examination and case management. Thereafter, Tolliver failed to follow through or take advantage of the services offered. Petitioner's assistance was reasonable under the circumstances.

Affirmed.

/s/ Christopher M. Murray
/s/ William C. Whitbeck
/s/ Michael J. Talbot