

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of I. A. CRIGLER, Minor.

UNPUBLISHED
April 1, 2014

Nos. 317400 & 317401
Wayne Circuit Court
Family Division
LC No. 98-368951-NA

Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondent C. L. Crigler (respondent-mother) appeals as of right in Docket No. 317400 the trial court’s initial order of disposition terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(ii), (g), (i), and (j), and respondent G. N. Crigler (respondent-father) appeals as of right in Docket No. 317401 the same order, which terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), (i), (j), (k)(ii), and (k)(iii). We vacate the portion of the trial court’s order determining that the statutory grounds for termination had been established and remand for further findings on that issue. We affirm in all other respects.

I. ADJUDICATION

Respondents argue¹ that they were deprived of procedural due process when the trial court informed them that they would be assessed fines and costs if they elected to have a jury trial at the adjudication of the petition for jurisdiction. They argue that the trial court’s statement “bullied” them into waiving a jury trial. Since termination occurred at the initial disposition, respondents’ attacks on the adjudication are timely and not collateral. Because neither respondent presented this issue to the trial court, our review is limited to plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 273-274; 779 NW2d 286 (2009); *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceeding.” *In re Utrera*, 281 Mich App at 9. Respondents bear the burden of proving prejudice. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

¹ Respondent-mother adopted respondent-father’s arguments.

The essence of procedural due process is fundamental fairness. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). The fundamental requirements of due process include an opportunity to be heard at a meaningful time and in a meaningful manner. *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009) (CORRIGAN, J.). “In Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, DHS policies and procedures, and various federal laws” *Id.* at 93.

A child protection proceeding in Michigan consists of two phases, an adjudicative phase and a dispositional phase. *In re Brock*, 442 Mich at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over a child. *Id.* It is the only phase in which a parent has the right to a jury trial. *Id.*; MCR 3.911(A). MCR 2.508 through MCR 2.516 governs jury procedure in juvenile cases. MCR 3.911(C). MCR 2.508(B)(1) provides for the payment of a jury fee as provided by law:

A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. *The jury fee provided by law must be paid at the time the demand is filed.* [Emphasis added.]

The material question, therefore, is whether there is a jury fee provided by law for a respondent in a child protection proceeding. Pursuant to MCL 712A.1(e) and MCL 712A.2(b), the “court” having jurisdiction in a child protection proceeding is the family division of circuit court. See also MCL 600.1021. MCL 600.857(3) provides:

If a jury trial is demanded in any proceeding by a party having a right to have a jury determine an issue, the demanding party shall pay into court a jury fee in an amount equal to the jury fee required in the circuit court in the same county but not to exceed \$ 30.00, which fee shall be paid to the county treasurer for deposit in the general fund of the county. *A jury fee shall not be required from a party demanding a jury trial in the juvenile division of the probate court² or under Act No. 258 of the Public Acts of 1974, as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.* [Emphasis added.]

Therefore, a jury fee is not required for an adjudicative trial in a child protective proceeding.

The record of the March 25, 2013 pretrial hearing clearly demonstrates that both respondents were aware of their right to demand a jury trial. It is also clear that the trial court advised both respondents that they had an absolute right to a jury trial and that both respondents

² MCL 600.1009 provides that “[a] reference to the former juvenile division of probate court in any statute of this state shall be construed to be a reference to the family division of circuit court.”

expressed their desire for a jury trial. However, upon expressing their desire, the trial court immediately stated, “Do you understand that in addition to the cost that will be assessed to you for the normal part of the case, you will also be assessed fines and cost[s] to somewhat compensate the jury for appearing here on that particular day.” Respondents answered “yes.” The trial court then asked respondents whether they wanted an opportunity to speak with their attorneys to discuss whether they wanted a jury or bench trial. Respondents again answered “yes.” After an indeterminate recess to discuss the matter, respondents decided to waive the jury and opt for a bench trial, for reasons not stated on the record.

There is no question that the trial court’s statements constituted a plain error. Not only is a jury fee for a trial improper, but assessing a fine for a jury trial is absurd and could deter anyone from electing a jury trial. However, because the record contains sufficient evidence to support the trial court’s exercise of jurisdiction over the child pursuant to MCL 712A.2(b)(1) and (2), we conclude that this error did not affect the outcome of the proceedings. Specifically, the evidence showed that respondents recently had their rights terminated to 12 other children, and there was no evidence that there had been a change in respondents’ behavior or home environment since. Additionally, respondent-mother failed to obtain proper prenatal care for the child who, as a result, was born six weeks premature. Accordingly, respondents have failed to meet their burden of showing that the plain error prejudiced them.

II. TERMINATION

With regard to the termination of respondents’ parental rights, the trial court did not make “[b]rief, definite, and pertinent” findings of fact on the statutory grounds for termination necessary for our review. MCR 3.977(I)(1). The trial court’s statement, “having reviewed and taken judicial notice of the file, relying upon testimony presented in court and legally admitted exhibits,” is not sufficient to constitute findings of fact under MCR 3.977(I)(1). Accordingly, we remand for the trial court to make the required findings necessary for our review.

We vacate the portion of the trial court’s order determining that the statutory grounds for termination had been established and remand for further findings on that issue. We affirm in all other respects. We retain jurisdiction.

/s/ Kathleen Jansen
/s/ Donald S. Owens
/s/ Douglas B. Shapiro

Court of Appeals, State of Michigan

ORDER

In Re I. A. Crigler, Minor

Docket No. 317400; 317401

LC No. 98-368951-NA

Kathleen Jansen
Presiding Judge

Donald S. Owens

Douglas B. Shapiro
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

As stated in the accompanying opinion, the trial court shall make the necessary findings of fact on the statutory grounds for termination. The proceedings on remand are limited to this issue.

The trial court shall transmit its written findings of fact to this court within 42 days of the Clerk's certification of this order.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 01 2014

Date

Jerome W. Zimmer Jr.
Chief Clerk