

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EVAN IRELAND, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MICHAEL GAVIN,

Respondent-Appellant.

UNPUBLISHED
February 13, 2007

No. 271072
Clinton Circuit Court
Family Division
LC No. 04-017610-NA

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court's order terminating his parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (n)(ii). We affirm.

Respondent father's sole argument is that the trial court committed plain error by allowing the termination hearing to proceed with respondent father present by telephone rather than in person. At the termination trial, respondent father was incarcerated in Arizona and was represented by counsel.

This Court addressed the issue of whether a respondent incarcerated in another state is required to be present for a termination of parental rights hearing in *In re Vasquez*, 199 Mich App 44; 501 NW2d 231 (1993). In *Vasquez, supra* at 46, the respondent was incarcerated in Texas and did not appear for the trial at all. After applying the balancing test announced in *Matthews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976), the *Vasquez* Court found that the respondent's due process rights were not violated because he could have appeared by telephone, among other mediums, and he was well represented by counsel. *Vasquez, supra* at 47-49. The *Matthews* balancing test is set forth as follows:

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official actions; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens

that the additional or substitute procedural requirement would entail. [*Matthews, supra* at 335.]

With regard to the first prong, this Court has acknowledged that the interest affected by parental termination hearings is an important one. *Vasquez, supra* at 47; *Matter of Render*, 145 Mich App 344, 347; 377 NW2d 421 (1985). With regard to the second prong, there is generally a chance of an erroneous deprivation of this interest when a respondent appears by telephone and is unable to confer with his attorney directly and as testimony is given. Here, however, even though respondent father appeared by telephone, he was adequately represented by counsel at the hearing, and respondent father did not at any time request additional time to confer with counsel during the proceedings. Counsel cross-examined witnesses and called respondent father to testify on his own behalf. Respondent father was given the opportunity to testify about whatever he wished and to correct errors in others' testimony. Therefore, the likelihood of an erroneous deprivation of respondent father's parental rights as a result of respondent father's appearing by telephone was extremely slim. Further, the burden on petitioner to bring a prisoner from Arizona to the court hearing was high, both fiscally and administratively. Finally, respondent father did not dispute the essential facts used to establish the statutory grounds for termination. Therefore, the trial court did not commit plain error by allowing the termination hearing to proceed with respondent father present by telephone rather than in person.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis