

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L.N.E.B., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

VICTOR TERRELL MOORE,

Respondent-Appellant,

and

ERICKA OPHLIA WHITE, a/k/a ERICKA
OPHELIYA WHITE, and AARON COLEMAN,

Respondents.

UNPUBLISHED

January 12, 2010

No. 291842

Wayne Circuit Court

Family Division

LC No. 06-450248-NA

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM

Respondent Victor Terrell Moore appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.¹

I. Right to Counsel

Respondent first contends that the trial court's failure to appoint an attorney to represent him until nine months after he first appeared violated his right to due process. We disagree. Because respondent did not preserve this issue for appeal, our review is for plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). With regard to termination proceedings, an indigent *respondent* must be advised by the court at his first appearance of his right to a court appointed attorney. MCR 3.915(B)(1)(a).

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

“Respondent,” as defined by court rule, includes the natural or adoptive mother, or the father of the child. MCR 3.977(B). However, a “father” is only a respondent if his legal right to the child has been established, for example, through an order of filiation, by an acknowledgment of paternity, or otherwise. MCR 3.903(A)(7).

Here, the trial court appointed an attorney for respondent once respondent’s paternity had been established. See MCR 3.903(A)(7)(e); MCR 3.915(B)(1)(a); MCR 3.977(B). Prior to that point, respondent was not a “respondent” within the meaning of the law and, thus, he was not entitled to court appointed counsel. Our review of the record confirms that respondent had access to counsel as soon as it was legally required under the court rules. Accordingly, no error occurred and respondent is not entitled to relief on this basis.

II. Notice

Respondent next asserts that his due process rights were violated because he was never personally served or given notice of the proceedings. Again, we disagree. We review this unpreserved claim for plain error affecting respondent’s substantial rights. *Carines, supra* at 763-764. The juvenile code requires that noncustodial parents be personally served with a summons and notice of the petition, as well as the time and place of the hearing. *In re Gillespie*, 197 Mich App 440, 442; 496 NW2d 309 (1992). Failure to provide such personal notice results in a jurisdictional defect that renders all of the lower court’s rulings void. *Id.*

Here, the record establishes that respondent was sent personal notice of the court dates to the addresses that respondent provided to the trial court and to petitioner. In addition, his own counsel provided respondent with notice of the court dates and requested him to appear in court. Accordingly, respondent was provided with notice of the proceedings and his due process rights were not violated.

III. Reunification Efforts

Finally, respondent argues that the agency failed to take adequate measures to reunite him with the child. This unpreserved claim lacks factual support in the record and is without merit. Respondent was provided with services even before he legally established paternity. The goal of his parent-agency agreement was reunification and it included parenting classes, visitation, and a treatment. Thus, reasonable services were provided and there was no error.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck