

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

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In the Matter of DESMOND ANDREW  
NAVARRE, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANDREW DWAYNE NAVARRE,

Respondent-Appellant.

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UNPUBLISHED

May 25, 2010

No. 294718

LC No. 07-005184-NA

Before SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Respondent, Andrew Dwayne Navarre, appeals as of right the October 15, 2009, order terminating his parental rights to his minor child, Desmond Andrew Navarre (d/o/b 11/17/2002) under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (c)(ii) (no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age), (g) (failure to provide proper care and custody), and (j) (likelihood of harm if returned).<sup>1</sup> Because respondent has not established a due process violation, has not established that DHS failed to provide reasonable services directed toward reunification, and has not established a basis for judicial disqualification, we affirm.

I

The proceedings began on August 16, 2007 when the Mecosta Department of Human Services (DHS) removed Desmond Navarre from the custody of his biological mother, Ericka Navarre. Desmond was placed in foster care and DHS filed a petition requesting the court to assume jurisdiction over Desmond. The following day, on August 17, 2007, the court held a

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<sup>1</sup> The child's mother, Ericka Navarre, voluntarily terminated her rights to the child, therefore, the termination hearing was held with regard to respondent only and she is not a party in this appeal.

preliminary hearing regarding temporary custody of Desmond. Ericka was present at the hearing but respondent was not present. It was noted on the record that respondent was incarcerated at Bellamy Creek Correctional Facility. The court found reasonable grounds to take custody of Desmond. The preliminary hearing continued on August 30, 2007. At the beginning of the hearing, the court stated that respondent was incarcerated and was unrepresented at the hearing. The court further stated, "The record can reflect that [respondent] was properly noticed for these hearings today and at this point in time, there's been no demand for participation or to be represented by Counsel."

On October 18, 2007, the court held a pre-hearing with regard to Desmond during which Ericka admitted sufficient facts for the court to assume jurisdiction. Respondent was present for the hearing telephonically from Bellamy Creek Correctional Facility. The trial court read the allegations presented in the DHS petition to respondent. The trial court also informed respondent that he was entitled to an attorney during the proceedings and that if he could not afford one, one would be appointed. Respondent declined representation. DHS worker Bridget Alexander testified that Desmond had been placed in a fictive kin placement with his half-brother. Alexander also testified that DHS had not created a Case Service Plan for respondent for the reason that he was incarcerated. The court inquired of respondent regarding the length of his sentence and his earliest possible release date. Respondent testified that he believed he might be released in May 2008. The court stated that it wanted a recent picture of Desmond provided to respondent.

On January 22, 2008, the trial court held a review hearing. It appears from the transcript of the hearing that respondent was not present from prison. The trial court stated that preparations had not been made to contact respondent for the hearing. The trial court stated on the record that after the hearing it was going to direct its juvenile referee to directly contact respondent in prison to inform him of what happened during the hearing and to get information from him regarding his earliest release date. The focus of the hearing was on Ericka improving her circumstances so she could eventually be reunited with Desmond. On April 17, 2008, the trial court held a review hearing. It does not appear from the record that respondent was present telephonically during this review hearing. There was no mention of respondent during the hearing. Again, the focus of the hearing was on Ericka's status in complying with her plan and improving her circumstances. On May 27, 2008, the trial court entertained a motion for supervised parenting time with regard to Ericka at a hearing. It does not appear from the record that respondent was present telephonically during this review hearing. The trial court directed that all visitation be supervised and phone calls suspended until the next hearing.

The trial court held a permanency planning hearing on July 15, 2008. Respondent was present telephonically during this review hearing. The trial court initiated a phone call to him in prison. The trial court asked respondent if he knew when he was going to get out of prison and respondent answered that his scheduled release date was September 4, 2008. The trial court informed respondent that the current recommendation was for Desmond to remain in foster care for the next 90 days. The trial court told respondent that the next hearing regarding Desmond would be on September 18, 2008. The trial court stated that respondent should be at the hearing and respondent stated that he would be there. The trial court also stated that after respondent was discharged from prison he should present himself at DHS, report where he was going to be living, and try to get a visit in with Desmond before the September 18, 2008, hearing.

The trial court held the next permanency planning hearing on September 18, 2008 as planned. Respondent had been released from prison by the scheduled hearing date and he was physically present at the hearing. Respondent was represented by counsel. Emily Harris, DHS foster care worker, testified that she spoke with respondent a couple times and met him once after he was released from prison two weeks prior. Harris stated that she gave respondent information to help him get a job and offered to set him up for counseling services. She also testified that respondent tried to visit with Desmond but due to some transportation issues with regard to DHS volunteers, respondent had not yet met with Desmond. Harris recommended supervised visitation for respondent and Desmond because respondent had “been out of [Desmond’s] life for a long time.” Harris’s goals for respondent were to complete more parenting courses, remain drug free, and find a suitable home and employment. The trial court echoed those goals for respondent as a parent. Respondent’s counsel stated that respondent wanted to work with DHS to be reunified with Desmond.

The next review hearing was on December 16, 2008. Respondent was not present for the hearing, though his counsel was present. At the hearing, Harris stated that she had spoken with respondent’s parole officer who stated that respondent had cut off his tether at the parole offices and ran away. Harris stated that a valid warrant for respondent’s arrest had been issued. The court asked respondent’s counsel if she had spoken with respondent and she stated that she had not had contact with respondent since he had allegedly cut off his tether approximately a week prior to the hearing. The court stated that all visits between respondent and Desmond were suspended “for obvious reasons” however, if respondent returned, he could re-petition for visitation. Harris testified that prior to the tether incident, respondent had attempted to visit with Desmond on scheduled dates but nobody brought Desmond to the scheduled visits. Eventually there was an extended visit at a Burger King.

The next review hearing took place on March 10, 2009. Respondent was not present at the hearing because he was incarcerated, although his counsel was present. The court held a meeting in chambers with all parties and counsel before the hearing and respondent participated telephonically. At the hearing, the court asked counsel on the record whether she was satisfied that the court had “complied with the Court rule with respect to communicating with [respondent]?” Respondent’s counsel replied in the affirmative and stated that “I did have the opportunity to speak with him directly before this hearing and he had an opportunity to communicate with the other people involved in chambers and I believe the Court has complied with the rule.” Harris testified that it was her recommendation that visits between respondent and Desmond continue to be suspended because he was incarcerated.

On June 9, 2009, the trial court held the next permanency planning hearing in the matter. Respondent and his counsel were present at the hearing, respondent having recently been released from incarceration on May 13, 2009. The court stated at the beginning of the hearing that it had received petitioner’s supplemental petition requesting the termination of parental rights of both the child’s mother, and respondent dated the same day, June 9, 2009. Harris recommended that DHS proceed with termination of respondent’s parental rights because respondent could not provide the stability Desmond needs as a result of respondent’s incarceration, re-incarceration, lack of employment, lack of housing, and Desmond’s lack of an emotional attachment to respondent. Respondent testified at the hearing stating that he wanted the opportunity to be a father to his child. He stated that he was trying to get a job to support

Desmond and also was trying to get student loans to attend college. Respondent admitted that he had not slept under the same roof or had a meal with Desmond since some time in 2005, and he had not provided any money to support Desmond in four years.

On August 4, 2009, the trial court held the final pre-trial hearing with regard to the petition for termination of Ericka and respondent's parental rights. Respondent and his attorney were present at the hearing. Respondent denied the allegations in the petition to terminate his parental rights to Desmond. Harris testified that she had been in contact with respondent and encouraged him to seek out services at Community Mental Health, especially anger management counseling. Harris stated that respondent was "of the opinion that he doesn't need any services." Harris recommended that visitation remain suspended for respondent for the reason that it was too traumatic for Desmond "to have [respondent] placed in and removed and placed in and removed from his life." The trial court agreed.

On September 15, 2009, three days before the scheduled termination hearing, Ericka appeared before the court and formally released her parental rights to Desmond. On that same date, the trial court entered an order terminating her parental rights. Three days later, on September 18, 2009, the trial court held the termination hearing with regard to respondent's parental rights to Desmond. As a result of a parole violation, respondent attended the hearing after being escorted to the hearing from jail. Harris, respondent, and respondent's sister testified at the termination hearing. On October 15, 2009, the trial court issued an opinion and order terminating respondent's parental rights to Desmond under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (c)(ii) (no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age), (g) (failure to provide proper care and custody), and (j) (likelihood of harm if returned). Respondent now appeals as of right.

## II

Respondent first argues that he was not allowed sufficient participation in the proceedings to protect his fundamental due process rights in violation of MCR 2.004. Generally, the determination whether proceedings complied with a party's right to due process presents a question of constitutional law that this Court reviews *de novo*. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). But because respondent did not raise a violation of MCR 2.004 that resulted in a violation of his due process rights in the trial court, this unpreserved constitutional issue requires reversal only if it constituted plain error affecting the substantial rights of respondent. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

MCR 2.004 applies to incarcerated parties and is as follows:

(A) This rule applies to

(1) domestic relations actions involving minor children, and

(2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights, in which a party is incarcerated under the jurisdiction of the Department of Corrections.

(B) The party seeking an order regarding a minor child shall

(1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;

(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and

(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule.

(C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.

(D) All court documents or correspondence mailed to the incarcerated party concerning any matter covered by this rule shall include the name and the prison number of the incarcerated party on the envelope.

(E) The purpose of the telephone call described in this rule is to determine

(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,

(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,

(3) whether the incarcerated party is capable of self-representation, if that is the party's choice,

(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and

(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not

apply if the incarcerated party actually does participate in a telephone call, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.

(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

The proceedings commenced on August 16, 2007 when DHS filed a petition requesting the trial court to take jurisdiction over Desmond and remove him from the care of his mother. The first hearing was held the following day on August 17, 2007. Respondent was incarcerated at that time and continued in prison until he was initially released on parole on September 4, 2008. Thus, respondent was incarcerated for the first year of these proceedings. During this time, the trial court held seven hearings.<sup>2</sup> The trial court's opinion and order mistakenly states that respondent was present for all of the hearings during this period. Our review of the record reveals that respondent was present telephonically for two hearings: the October 18, 2007 pre-hearing where he declined the representation of counsel, and the July 15, 2008 permanency planning hearing.

But the proceedings continued for another year and during this time the trial court held six more hearings.<sup>3</sup> Respondent was represented by counsel at all six hearings. Respondent was

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<sup>2</sup> 8/17/07 – preliminary hearing (respondent not present)

8/30/07 – preliminary hearing continued (respondent not present)

10/18/07 – pre-hearing (respondent present telephonically, respondent declined counsel)

1/22/08 – review hearing (respondent not present)

4/17/08 – review hearing (respondent not present)

5/27/08 – motion hearing regarding Ericka's parenting time (respondent not present)

7/15/08 – permanency planning hearing (respondent present telephonically)

<sup>3</sup> 9/18/08 – permanency planning hearing (respondent physically present and counsel present)

12/16/08 – review hearing (respondent did not show up because he was wanted on an arrest warrant, counsel present)

3/10/09 – review hearing (respondent re-incarcerated and not present, counsel present and confirmed on the record that she was satisfied that the trial court had complied with MCR 2.004 as a result of a conference held in chambers before the actual hearing that respondent did participate in via telephone)

6/9/09 – permanency planning hearing (respondent physically present and counsel present)

8/14/09 – pretrial hearing (respondent physically present and counsel present)

9/18/09 – termination hearing (respondent physically present after being brought over from jail and counsel present)

physically present at four hearings. Of the two he missed, he did not show up at one because there was a warrant out of his arrest. With regard to the second one, respondent took part via telephone from jail in a conference in chambers before the hearing, though he was not on the phone for the actual hearing. At the hearing, on the record, respondent's counsel confirmed that she was satisfied that the trial court had complied with MCR 2.004 as a result of the conference held in chambers before the actual hearing that respondent did participate in and that he had the opportunity to communicate with all parties at that time.

While respondent did not claim any violation of MCR 2.004 during the two years of proceedings in the trial court, now on appeal he argues that he was not allowed sufficient participation in the proceedings to protect his fundamental due process rights in violation of MCR 2.004. He specifically contends that there is no suggestion in MCR 2.004 that participation of the incarcerated party is only required some of the time or for some of the proceedings. Respondent does not support this contention with legal precedent. Petitioner argues that the proceedings protected respondent's due process rights and no error occurred. Petitioner also points out that respondent did receive proper notice of all the hearings and respondent does not argue that he did not receive notice.

The importance of a parent's "essential" and "precious" right to raise his child is well-established in our jurisprudence. *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009). Because "[t]his right is not easily relinquished," "to satisfy constitutional due process standards, the state must provide the parents with fundamentally fair procedures." *Id.* (internal quotation marks omitted). Our Supreme Court acknowledged in *Hunter*, "[t]ermination cases introduce a significantly heightened intrusion upon a parent's fundamental right to parent because they involve an all-or-nothing proposition," and thus "due process concerns are most heightened." *Id.* at 269.

In *In re Rood*, 483 Mich 92, our Supreme Court recently reiterated that the three factors set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976), supply the proper guideposts for determining the process due in a particular case:

"First, the private interest that will be affected by the official action; 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."

These factors recognize that due process "is flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 US 334, quoting *Morrissey v Brewer*, 408 US 471, 481; 92 S Ct 2593; 33 L Ed 2d 484 (1972).

First, the private interest of a parent in the care, custody and control of his children is one of the oldest fundamental liberty interests recognized by the United States Supreme Court. *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v Massachusetts*, 321 US 158, 166; 64 S Ct 438; 88 L Ed. 645 (1944). In *Santosky v Kramer*,

455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982), the United States Supreme Court emphasized that, “[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” Thus, the first *Eldridge* factor weighs heavily in favor of respondent’s right to participate in the proceedings affecting his rights to Desmond.

The second *Eldridge* factor considers the degree to which the procedures afforded risk an erroneous deprivation of an interest. Here, the record reveals that respondent did not participate in five of the seven hearings conducted while he was incarcerated during the first year of proceedings. The trial court offered respondent counsel at the hearing on October 18, 2007, but he declined counsel.

A review of the record reveals that respondent was not present at the preliminary hearing and continued preliminary hearing that took place on August 17, 2007, and August 30, 2007, respectively, when the trial court placed Desmond in temporary custody. There would not seem to be any violation of MCR 2.004(F) or due process on this basis because “immediate action [was] necessary on a temporary basis to protect the minor child.”

Respondent was present telephonically at the October 18, 2007 pre-hearing when the court took jurisdiction of Desmond and addressed disposition. The January 22, 2008 hearing and the April 17, 2008 proceedings were review hearings and though respondent was not present telephonically, his circumstances had not changed because he was still incarcerated. The May 27, 2008 hearing was a motion for supervised parenting as it related to Ericka and did not relate at all to respondent. With regard to the July 15, 2008, permanency planning hearing, the trial court contacted respondent and respondent notified the court that he was expected to be released from prison on September 4, 2008.

But the proceedings continued after respondent was released from prison and respondent had every opportunity to participate. Respondent did participate in four of the next six hearings conducted during the second year of the proceedings and his counsel was present at all of them. Respondent was present for the permanency planning hearing on September 18, 2008. Respondent, although not incarcerated, did not appear for the December 16, 2008 hearing because there was a warrant out for his arrest. Respondent’s counsel was present at the hearing. Prior to the next review hearing on March 10, 2009, respondent was again arrested. Though, on that date, respondent participated telephonically in a meeting involving all parties in chambers before the hearing took place. At the hearing, on the record, respondent’s counsel confirmed that she was satisfied that the trial court had complied with MCR 2.004 as a result of the conference held in chambers before the hearing. Respondent was present for the permanency planning hearing on June 9, 2009, the final pretrial hearing on August 4, 2009, and the termination hearing on September 18, 2009 when he provided extensive testimony.

The record also reveals that the DHS worker, Harris, had worked extensively with respondent. She understood the nature of respondent’s relationship with Desmond before his incarceration; provided information on the length of time that respondent had been incarcerated, what services he received in prison, and when he was due to be released; was in contact with his parole officer; and even wrote a Case Service Plan for respondent and personally visited him in the Isabella County jail after he was re-arrested to present him with the plan which he signed.

During the time respondent was not incarcerated, Harris followed-up with respondent about his living arrangements, job situation, and suggested services to respondent. Harris also set up visitation for respondent and Desmond. But only a short time later respondent had an arrest warrant issued and the trial court suspended visits. Harris also looked into placing Desmond with respondent's sister, and although she was interested in caring for Desmond, that placement was not deemed suitable by DHS.

With regard to the second *Eldridge* factor, after reviewing the record on the whole, we conclude that the risk of an erroneous deprivation of parental rights was not increased by respondent's lack of participation in the five hearings that took place during the year he was incarcerated in violation of MCR 2.004. The termination proceedings continued for another year and respondent had every opportunity to fully participate in the process but at points did not make himself available. During this time, respondent was represented by the same attorney who advocated for preservation of respondent's parental rights, consistent with respondent's wishes. Further, the record is fully developed, contains copious evidence, and does not contain any evidentiary gaps giving rise to a substantial risk that respondent would suffer an erroneous deprivation of his parental rights under the circumstances of this case.

With regard to the third *Eldridge* factor, clearly the cost and inconvenience of a telephone call imposes on the state a de minimus fiscal and administrative burden. On balance, however, respondent does not challenge notice, and admitted during the termination hearing that he received notice from DHS regarding the proceedings while incarcerated. There is no indication in the record that respondent ever requested that he be allowed to participate in the hearings he missed either personally or telephonically or that he objected to the fact that a hearing had been held and that he did not take part in it. Further, the trial court asked him if he wanted an attorney and he declined.

Applying the three-part balancing test set forth in *Mathews* to the circumstances of this case, respondent has not established a due process violation.

### III

Next, respondent argues that the failure of the state to follow law and policy deprived respondent of his substantive rights when it failed to make reasonable efforts to reunify respondent with Desmond after he was released from prison. A claim that the respondent was not provided reasonable services directed toward reunification is relevant to the sufficiency of the evidence for termination of parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005); *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). This Court reviews for clear error the trial court's determination that the petitioner established a statutory ground for termination. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The record reflects that the DHS made every effort toward reunification. Harris worked with respondent extensively by creating a Case Service Plan, suggesting services to respondent both while he was incarcerated and when he was not, and setting up visitation. The court also extended these proceedings for over two years giving respondent a chance to demonstrate his progress once he was initially released from prison in September 2008. Instead, respondent went back to his criminal lifestyle and was incarcerated on two occasions. First, when he cut off his tether at his parole office and ran away, his behavior resulted in his incarceration from December

2008 and May 2009. After being released, instead of securing employment, respondent used student loans to purchase a car and drive it on a suspended license with a passenger in the car that was carrying illegal drugs. Respondent was again arrested and returned to jail on August 12, 2009 and remained in jail as of the termination hearing on September 18, 2009. Respondent testified that he would not be released until February or April 2010 at the earliest.

Respondent did not have housing for Desmond and had no income. His only known jobs were two months at Big Boy in 2004 and one month at a telemarketing firm sometime in 2009. Two weeks before the termination hearing Harris visited him in jail and asked respondent how he supported himself and he said “through criminal activity.” Respondent also failed to comply with services suggested by DHS including going to Community Mental Health for anger management issues and substance abuse treatment because he believed he did not need the services. While respondent stated repeatedly that he loved his son and wanted a chance to be a father to Desmond, other than a few supervised visits with him, respondent had spent no significant time with Desmond since before he was incarcerated in October 2004, nearly five full years before the termination hearing.

The trial court terminated his parental rights because once respondent was no longer in a controlled environment, respondent continually made poor choices, reverted back to his criminal lifestyle, failed to comply with his service plan as well as his parole, and due to his own choices did not make himself available to properly care for Desmond in the long term. Respondent’s parental rights were terminated as a direct result of his own conduct, not that of Ericka, DHS, or anyone else. Respondent has not established that DHS failed to provide reasonable services directed toward reunification.

Furthermore, the trial court did not clearly err when it found that the evidence clearly and convincingly established that respondent, without regard to intent, failed in the past to provide proper care or custody for the minor child, and that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time given the age of the child. MCL 712A.19b(3)(g). The trial court also did not clearly err when it found that there was a reasonable likelihood, based on father’s conduct or capacity, that the child would be harmed if returned to respondent’s home, MCL 712A.19b(3)(j), that the conditions of adjudication continue to exist, MCL 712A.19b(3)(c)(i), and finally that there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age, MCL 712A.19b(3)(c)(ii).

#### IV

Finally, respondent argues that the probate judge should have been disqualified because the trial court judge had known respondent since childhood. Procedural due process is a constitutional right, and this Court reviews such issues de novo. *Kampf v Kampf*, 237 Mich App 377, 381-382; 603 NW2d 295 (1999). However, respondent did not raise this issue in the trial court, and unpreserved constitutional claims are reviewed for plain error that affected respondent’s parental rights. *Carines*, 460 Mich 763-764.

The procedure for disqualification of a judge is set forth in MCR 2.003. MCR 2.003(B)(1) provides that a judge may be disqualified if the judge “is personally biased or prejudiced for or against a party.” MCR 2.003(B)(1). A party must show actual and personal

prejudice to warrant disqualification. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). The party who asserts partiality has to overcome the heavy presumption that a judge is impartial. *Id.* at 497. "Opinions formed by a judge on the basis of facts introduced or events occurring during the course of the current proceedings, or of prior proceedings, do not constitute bias or partiality unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester, MI, Lodge No 2225 of Benevolent & Protective Order of Elks of USA*, 228 Mich App 20, 39; 577 NW2d 163 (1998). The fact that a judge has presided over unrelated proceedings involving a party is insufficient by itself to establish bias. *Impullitti v Impullitti*, 163 Mich App 507, 514; 415 NW2d 261 (1987).

In the record, the trial judge made brief comments referencing the fact that he had known respondent since he was a child as a result of unrelated juvenile proceedings involving respondent and at points referred to him as "one of my kids." None of the comments evidences any sort of bias or prejudice, and in fact, even respondent does not allege bias. Respondent suggests only the possibility of the appearance of impropriety on behalf of the judge because he had personal knowledge of respondent. The longest of the exchanges in the record is as follows:

RESPONDENT: The mistakes that I've made is [sic] unjustifiable as a father. It's my job to take care of him as a human being 'cause I brought him into this planet. But, I'm asking for another chance to be a man for my son. I ain't never had a father which I don't care about, but I want to be his.

While we was on break, Emily was telling me how this new foster dad that he got help him work on cars and took him to the beach, that hurt me more than anything 'cause I wanted to be the one to do that with him. I want that chance.

Everybody in my life except for my sister, given up on me no matter who they are, friends, family, my dad, my mom. Please don't give up on me. I've let you down a lot of time, but I give you my word that it will never happen again.

THE COURT: Andrew, what's this case about? Why are we here today?

RESPONDENT: Because--

THE COURT: Who's the most important person in this case?

RESPONDENT: My son.

THE COURT: All right. Now, giving up on somebody is not my job. But, I have to focus in on what's best for your son.

RESPONDENT: And I respect that.

THE COURT: All right. Is there anything else you'd like to say, Andrew?

RESPONDENT: Just please give me a chance.

THE COURT: How many chances have I given you, Andrew?

RESPONDENT: A lot.

THE COURT: Anything else—I presume you love your son?

RESPONDENT: Yes.

THE COURT: All right. Anything else you'd like to say you haven't had a chance to say?

RESPONDENT: Nope.

Clearly, the record does not substantiate that the judge had an actual and personal bias against respondent. Viewed in context, the remarks made by the judge do not reflect any predisposition or any bias at all against respondent. Furthermore, the judge did not reference his prior contacts with respondent in explaining the termination ruling. In light of the mere fact that the judge had presided over unrelated juvenile proceedings involving respondent, and the absence of any further showing by respondent to overcome the heavy presumption that the judge conducted the proceedings and rendered the termination ruling in an impartial manner, we conclude that no basis exists for judicial disqualification under MCR 2.003(B)(1). *Impullitti*, 163 Mich App 514.

V

Because respondent has not established a due process violation, has not established that DHS failed to provide reasonable services directed toward reunification, and has not established a basis for judicial disqualification, we affirm the trial court's order terminating his parental rights to his minor child.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Pat M. Donofrio