

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
February 5, 2013

In the Matter of JONES/GIPSON, Minors.

No. 311925  
Bay Circuit Court  
Family Division  
LC No. 11-010970-NA

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Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur with the majority's conclusion that there were several well-demonstrated grounds for termination and that termination was in the best interests of the children given their mother's mental illness, homelessness and inability to care for them or to benefit from services.

I conclude, however, that respondent mother was denied her right to visit with her children once they were removed.<sup>1</sup> This right was completely ignored by the trial court, the prosecution, and the attorney for the minors, all of whom seemed to be unaware of the relevant statute.

MCL 712A.13(11) provides that a trial "court *shall* permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time." The statutory language is clear. In the normal course, parenting time is to be frequent. Where the court concludes that parenting time, even if supervised, may be harmful to the child, then the court may fashion appropriate limits and conditions based upon the results of a psychological evaluation of the child. In this case, parenting time was completely withheld though there was never any finding that visitation, even if supervised, would be harmful and no psychological evaluation of the children was obtained. Instead, visitation was denied simply because respondent failed to comply with the order for drug testing. Though there had not been any allegations of drug abuse brought against the mother by DHS, it nevertheless requested mandatory drug testing as a condition of visitation.

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<sup>1</sup> The children were removed pursuant to the respondent mother's own request because she could not provide adequate care given her homelessness.

Unfortunately, respondent rarely appeared for her drug screens. Her failure to do so may have occurred because she was in fact using drugs, though given her nomadic state, other reasons for her non-appearance are not unlikely. As a result of her non-compliance with the drug screens, respondent was not permitted to have any visitation—supervised or otherwise—with her children.

While drug testing can be a proper element of a service plan, making non-compliance with drug screens an absolute bar to even supervised visitation is a violation of MCL 712A.13(11). As a result of this violation, respondent mother was not allowed *any* visitation from the date of the preliminary hearing on September 19, 2011 until termination of her parental rights was ordered 9 months later. Had this case been closer, I would have agreed with respondent that the failure to provide visitation required reversal. However, under the facts of this case, I must agree with the majority that the termination of respondent's parental rights was not the result of this unlawful denial of parenting time.

/s/ Douglas B. Shapiro