STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TARINA LASHAE WATERS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HELEN JEAN BRITTON,

Respondent-Appellant,

and

DARRELL JACKSON and ANTHONY WATERS,

Respondents.

UNPUBLISHED
September 21, 2001

No. 231191
Wayne Circuit Court
Family Division
LC No. 91-293233

Before: Owens, P.J., and Holbrook, Jr. and Talbot, JJ.

PER CURIAM.

Respondent-appellant Helen Jean Britton appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(*ii*), (g), (i) and (j). We affirm.

Respondent-appellant contends that the trial court erred as a matter of law by proceeding with the permanent custody trial in her absence without appointing an attorney to represent her interests.[1] We review de novo questions of law. *James v Alberts*, 464 Mich 12, 14-15; 626 NW2d 158 (2001).

Specifically, respondent-appellant contends that the trial court violated MCR 5.915(B). MCR 5.915(B)(1) states:

[1] Termination of parental rights was requested in the initial petition.

> (a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that
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> (*i*) the respondent has the right to a court-appointed attorney if the respondent is financially unable to retain counsel, and,
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> (*ii*) if the respondent is not represented by an attorney, that the respondent may request and receive a court-appointed attorney at any later hearing.

MCR 5.915(B)(1)(b) further states that if "it appears to the court . . . that the respondent is financially unable to retain an attorney and the respondent desires an attorney, the court shall appoint one to represent the respondent at any hearing conducted pursuant to these rules."

We have ruled that MCR 5.915(B) does not require "that counsel be appointed upon 'the court's own motion.'" *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). Instead, "MCR 5.915(B) charges parents with 'some minimum responsibility' in regard to having counsel appointed for their benefit." *Id.* In the instant matter, the record does not indicate that respondent-appellant requested an attorney. Instead, the record states that she called the trial court to indicate that she "had a problem with transportation." We note that respondent-appellant was not a novice to termination of parental rights proceedings, having had her parental rights to four children terminated in the past. Because there is no evidence that respondent-appellant expressed a desire to have an attorney represent her interests, we are not persuaded that the trial court erred by failing to appoint counsel on her behalf.[2]

Respondent-appellant further contends that the trial court erred by failing to adjourn the hearing because she had notified the court that she "had a problem with transportation," thereby implying that she was unable to attend. A trial court's decision on a motion for an adjournment is typically reviewed for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). However, as noted above, there is no indication that respondent-appellant requested an adjournment. Contrary to respondent-appellant's assertions on appeal, it is not clear that her notification that she had a problem with transportation was an adjournment request, nor is it clear that, but for the transportation problem, she would have attended the hearing. Therefore, we are unable to conclude that the trial court erred as a matter of law by continuing with the proceeding in her absence. *James, supra* at 14-15.

Respondent-appellant further contends that the trial court erred as a matter of law by failing to make a finding regarding the "best interests of the child." As noted above, we review legal issues de novo. *James, supra* at 14-15. MCL 712A.19b(5) provides:

> If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for

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[2] We further note that no evidence of respondent's financial position was introduced. Thus, respondent has not established that she was even entitled to a court-appointed attorney under the court rule.

> reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests.

However, the trial court expressly made a finding that "[t]he termination of parental rights is clearly not contrary to the best interests of the child . . . ." Consequently, respondent-appellant's contention is plainly without merit.

Finally, respondent-appellant contends that the trial court erred by finding statutory grounds to terminate her parental rights. In order to terminate parental rights, a trial court must find that one of the statutory grounds for termination in MCL 712A.19b(3) has been satisfied by clear and convincing evidence. *In re Terry*, 240 Mich App 14, 21-22; 610 NW2d 563 (2000). We review the trial court's factual findings for "clear error." *Id.*, at 22; MCR 5.974(I). "A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *Terry*, *supra* at 22. In the instant matter, the trial court found that there was clear and convincing evidence supporting the termination based on the following subsections of MCL 712A.19b(3): (a)(ii); (g); (h), and (i). After reviewing the record, we are not persuaded that the trial court clearly erred in finding that these statutory grounds for termination were supported by clear and convincing evidence. Therefore, the trial court did not err in terminating respondent-appellant's parental rights pursuant to MCL 712A.19b.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot