

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEJANA JIHAD KIRK, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KESHA KIRK,

Respondent-Appellant,

and

BRUCE MORRIS,

Respondent.

UNPUBLISHED

September 25, 2001

No. 228677

Ingham Circuit Court

Family Division

LC No. 00-324081-NA

Before: K. F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Respondent-appellant Kesha Kirk (herein “respondent”) appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19(b)(c)(i), (g) and (j). We vacate the court’s order and remand.

On June 5, 2000, the trial court conducted a termination hearing in this matter. At the start of the hearing, respondent’s counsel moved to withdraw from the case because respondent was not present in court. Counsel stated that respondent had attended the pretrial conference on March 31, 2000, and he had had no contact with her since that time. Counsel assured the court that respondent was made aware of the date of the termination hearing.

The trial court agreed that counsel’s representation of respondent would be difficult without her cooperation, and granted counsel’s motion to withdraw. The court then conducted the termination hearing without respondent or her counsel. At the conclusion of the hearing, the court made findings of fact and terminated respondent’s parental rights to the minor child. Immediately following the court’s ruling, respondent entered the courtroom and indicated that she had been waiting in the hallway outside the courtroom. The trial court then conducted an off-

the-record meeting with counsel for petitioner in chambers while respondent waited in the courtroom. Although we cannot know what was discussed in chambers, we do know that the trial court then informed respondent that the hearing was over and her parental rights were terminated. The court advised respondent that her proper course of action was to appeal the decision.

On appeal, respondent argues that the trial court erred in granting her attorney's motion to withdraw. We review a trial court's ruling on a motion to withdraw for an abuse of discretion. *In re Withdrawal of Attorney*, 234 Mich App 421, 431; 594 NW2d 514 (1999).

Respondent had a right to representation by counsel at the termination hearing. MCL 712A.17(c); *In re Powers*, 244 Mich App 111, 121; 624 NW2d 472 (2000). The record is void of any evidence that respondent waived or relinquished her right to counsel. Although counsel stated that he had not had contact with respondent since the pretrial conference, counsel made no representations regarding his efforts, if any, to contact respondent. At the time counsel moved to withdraw, the trial court could not have known whether counsel's withdrawal would have a material adverse effect on respondent's interests. Under the circumstances, we conclude that the trial court abused its discretion in allowing respondent's court-appointed counsel to withdraw at the commencement of the termination hearing. *In re Withdrawal of Attorney, supra* at 431.

Moreover, we cannot conclude that the violation of respondent's right to representation was harmless error. Despite respondent's absence at the termination hearing, minimally, counsel could have been present to make objections, cross-examine the witness, argue on behalf of respondent, and preserve the record for appeal. Further, if the trial court had not permitted her attorney to withdraw, he could have moved for a rehearing of the court's termination decision pursuant to MCL 712A.21(1) when the parties discovered that she was present.

The order of termination is vacated and this matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Michael J. Talbot