

STATE OF MICHIGAN
COURT OF APPEALS

In re N. J. BLAIR-EMORY, Minor,

UNPUBLISHED
September 14, 2026
9:05 AM

ERNEST LAMONT EMORY,

Plaintiff-Appellee,

v

CHARBRIAE MONET BLAIR,

Defendant-Appellant.

No. 378411
Wayne Circuit Court
LC No. 2023-001033-NA
LC No. 2024-112442-DC

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

Defendant-mother appeals from the trial court’s entry of a default and custody and parenting time order, arguing that she received ineffective assistance of counsel. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case began with a child protective proceeding involving mother and her child, NJBE. In 2023, NJBE reported being physically abused by mother, and the Department of Health and Human Services (DHHS) filed a petition to remove NJBE and his younger brother, NEB,¹ from mother’s custody. Under Wayne Circuit Court’s Family Court Plan, Local Administrative Order No. 2023-06J, that petition was filed in the Juvenile Section of the family division, which authorized the petition (Docket No. 2023-001033-NA). Mother pleaded no contest to the factual allegations establishing jurisdiction. The trial court took jurisdiction of NJBE and NEB and ordered that mother complete a parent agency agreement (PAA), which required mother’s “participating in mental health treatment, her participation in parenting classes and parenting time,

¹ While NEB was a party in the underlying child protective proceedings, he was not a party in the subsequent custody dispute or this appeal.

her participating in substance abuse treatment, including drug screens, her obtaining legal income, her obtaining adequate housing, and then, her communication regularly with the agency.”

Plaintiff-father declared his paternity to NJBE, and NJBE was placed with him. After an investigation, DHHS declined to include father as a respondent in the petition. Mother began making progress with her PAA but had issues complying with the mental health treatments and reporting requirements. Father expressed interest in seeking custody of NJBE, and the trial court appointed attorneys for him and mother.

On October 21, 2024, father filed a complaint under the Child Custody Act, MCL 722.21 *et seq.*, seeking sole legal and physical custody of NJBE. Under Wayne Circuit Court’s Family Court Plan, the matter was initially filed in the Domestic Relations Section of the family division (Docket No. 2024-112442-DC). Under the terms of the plan and MCL 600.1023, however, the custody matter was reassigned to the Juvenile Section judge presiding over the child protective proceeding. Mother’s appointed counsel filed an appearance in the custody matter on November 13, 2024, and mother was served with the complaint and summons on December 30, 2024. On July 11, 2025, a hearing was held on the custody issue. Counsel for mother acknowledged that he had not filed an answer or any other motion in the case. Despite mother’s failure to answer, father did not initially seek entry of a default because he wanted to work with mother to resolve the custody issue. The parties were unable to reach an agreement, however, and father moved for entry of a default and entry of the proposed custody and parenting time order.

At the hearing on August 4, mother objected to the proposed custody order, asserting that she wanted joint physical and legal custody. The court noted that she was not in compliance with her PAA, had not benefited from her PAA, and had never obtained unsupervised parenting time with NJBE. The court granted father’s motion for entry of a default and entered the proposed custody and parenting time order that day, granting father sole physical and legal custody of NJBE and mother supervised parenting time. The court terminated its wardship and jurisdiction over NJBE in the child protective proceeding and referred the issue of child support to the Wayne County Friend of the Court. This appeal followed.²

II. INEFFECTIVE ASSISTANCE

Mother on appeal argues that she received ineffective assistance of counsel. Mother claims she may bring a claim of ineffective assistance of counsel because this is a child protective proceeding. Mother is correct that a party may bring an ineffective-assistance claim in a child protective proceeding. See *In re Casto*, 344 Mich App 590, 611; 2 NW3d 102 (2022) (“Given the

² We note that the trial court did not clearly distinguish between orders entered in the custody case and those entered in the child protective proceeding. For example, the August 4 order bears the docket numbers for both proceedings, but it was not entered on the custody case’s register of actions. The order, however, resolved father’s motion for entry of a default and the proposed custody and parenting time order, relief sought only in the custody case, and therefore arguably should only have had the custody case’s docket number. Although those discrepancies resulted in both trial court docket numbers appearing on this opinion, this appeal relates solely to the custody case.

nature of accusations and consequences in child-protective proceedings, this right [to the assistance of counsel in criminal cases] has been extended to these civil proceedings.”); see also *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016) (“The principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings . . .”). “It is axiomatic that the right to effective assistance of counsel is derived from a right to counsel.” *Haller v Haller*, 168 Mich App 198, 199; 423 NW2d 617 (1988). “Michigan recognizes a right to counsel in termination of parental rights actions as well as in paternity proceedings.” *Id.* (citations omitted).

This case, however, arises from the *custody* proceeding, not the child protective proceeding. Although the custody action arose from the child protective proceeding, mother does not challenge the outcome of that proceeding. Nor does mother challenge the trial court’s entry of a default or its award of custody to father. Her sole issue on appeal is a claim of ineffective assistance in her custody case. *Haller* held that a party does not have a due-process right to counsel in custody proceedings:

In [*Artibee v Cheboygan Circuit Judge*, 397 Mich 54; 243 NW2d 248 (1976)], our Supreme Court stated: “An analysis of what process is due in a particular proceeding must begin with an examination of the nature of the proceeding and the interests which may be affected by it.” [*Id.* at 56-57]. The *Artibee* Court focused on the following factors: (1) paternity actions are “quasi-criminal,” generally prosecuted by public officials at public expense, (2) a defendant faces significant penalties, including a substantial financial commitment as well as possible imprisonment, and (3) a paternity proceeding is sufficiently complex so as to require counsel to [e]nsure a fair trial.

Applying this analysis to the instant case, we find no due process right to counsel.

First, and foremost, a custody proceeding is a civil action initiated by and on behalf of the litigants. [MCL 722.21 *et seq.*] In contrast to *Artibee*, where the resources of the state were arrayed against the defendant, the state is not a party in a custody proceeding. The interest of the state, exercised through its judiciary, is to advance and protect the best interests of the child. [MCL 722.27(1)(a)].

Second, while we recognize that a parent’s interest in the care and custody of a minor child is an important interest that warrants due process protection, *In re Dittrick Infant*, 80 Mich App 219; 263 NW2d 37 (1977), a custody decree does not constitute a complete termination of the parental bond. Full parental rights are retained including reasonable visitation. [MCL 722.27(1)(b)]. In addition, the element of finality of obligation discussed in *Artibee* is not present in a custody proceeding. A custody decree is subject to modification for proper cause shown or because of a change in circumstances, in the best interest of the child. [MCL 722.27(1)(c)]. A decree is only effective until the minor attains the age of majority. [MCL 722.27(1)(a)].

Third, although we find the proceedings sufficiently complex to require counsel, this factor alone is insufficient to give rise to a due process right to appointed counsel.

We therefore conclude that the due process factors considered in *Artibee*, as applied to the instant case, do not weigh in favor of a constitutional right to counsel. Since no such constitutional right is implicated, it follows that plaintiff was not entitled to effective assistance of counsel. We note that plaintiff is free to seek new counsel and move for modification of the custody decree. [*Haller*, 168 Mich App at 199-200.]

Mother therefore does not have a constitutional right to counsel in this custody proceeding and is not entitled to assert a claim of ineffective assistance of counsel. *Id.* Accordingly, mother cannot obtain relief on that basis. *Id.*

Affirmed.

/s/ Mariam S. Bazzi

/s/ Sima G. Patel

/s/ Matthew S. Ackerman