

MSC: In re Mason Minors

27. May 2010 By Madelaine Lane

On Wednesday May 26, 2010, the Michigan Court of Appeals issued its opinion in *In re Mason Minors*, Case No. 139785. In *Mason*, the Court reversed the Court of Appeals' opinion which had affirmed the trial court's decision to terminate the respondent-father's parental rights. The Court determined that the trial court had committed several legal errors and that the Department of Human Services had failed to engage the respondent in the proceedings. In particular, the Court held that the trial court and DHS had failed to facilitate the respondent's participation in the termination proceeding by telephone, as required by MCR 2.004, and provide the respondent with a copy of the parent-agency agreement. In light of these errors and failures, the Court reasoned that the termination of the respondent's parental rights was premature.

Respondent is the father of two young sons: J. and C. Shortly before his youngest son's birth, the respondent was convicted for operating while intoxicated and sentenced to a period of incarceration. While the respondent was incarcerated, DHS filed a removal petition accusing both parents of neglect. The initial pre-trial hearing was conducted on July 24, 2007. Respondent participated by telephone from the jail and was represented by a court-appointed attorney. At their mother's request, the children were placed in the care of the respondent's family.

Following the hearing, the DHS foster care worker created a parent-agency treatment plan outlining a number of requirements respondent and his wife had to follow to maintain contact with this children and ultimately to regain custody. It is unclear whether the respondent ever received this plan. His signature does not appear on the document.

Five additional hearings were held regarding the care and custody of the respondent's children. He was not invited to participate in any of these hearings. Finally, at the December 3, 2008 permanency planning hearing, the respondent was invited to participate by telephone. At that hearing, the DHS worker recommended that both parent's rights should be terminated, in part, because the boys had been in care for almost 18 months. At the February 3, 2009 termination hearing, the DHS worker admitted that he had never spoken with the respondent. However, he argued that termination was in the children's best interests because, even when the respondent was ultimately released from prison, it would take him another six months to comply with the parent-agency treatment plan.

At the conclusion of the hearing, the trial court terminated the respondent's parental rights. It faulted him for not personally caring for his children during the previous two years, as well as failing to take advantage of the services offered by DHS. It disregarded the fact that the respondent's incarceration prevented him from

personally caring for his children or participating in DHS services. On appeal, the Court of Appeals affirmed the trial court's decision.

Following oral argument on the application for leave to appeal, the Michigan Supreme Court issued its opinion reversing both the Court of Appeals and trial court's decisions. The Court determined that the respondent was deprived of his right to participate in each of the hearings via telephone, as provided in MCR 2.004. Under MCR 2.004(F), the court is prohibited from granting the moving party's request for relief unless the respondent actually participates in "a telephone call". The Court concluded that the respondent's participation at two of the seven hearings was not sufficient. Furthermore, the Court found that DHS violated its statutory duty to provide the respondent with the parent-agency treatment plan. Finally, the Court ruled that the trial court erred in finding that the respondent's incarceration alone was sufficient grounds for termination. The trial court faulted the respondent for failing to fulfill parent-agency treatment plan which never made any accommodations for the fact that he was incarcerated. The Supreme Court instead determined that the respondent was never afforded a meaningful opportunity to comply with the plan. Accordingly, the Judgment of the Court of Appeals was reversed and the case remanded to the circuit court for further proceedings consistent with this opinion. A copy of the Court's order is [here](#).

Justice Markman authored a dissenting opinion, joined by Justice Hathway, arguing that any barriers preventing the respondent from parenting his children, specifically his incarceration, were of his own making. Further, Justice Markman commented that there was no evidence that the respondent had provided for his children while they were living with their mother, foster parent, or their paternal aunt and uncle. Justice Weaver authored a separate dissenting opinion which asserted that the Supreme Court's decision improperly rested on an issue that was not raised in either the trial court or the Court of Appeals.