

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SG. TG DG and QR, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUSAN GRAHAM,

Respondent-Appellant,

and

CHARLES RIGG,

Respondent-Appellant,

and

JACK GRAHAM,

Appellant.

UNPUBLISHED

March 6, 2001

No. 227520

Ingham Circuit Court

Family Division

LC No. 00-004693-NA

Before: Markey, P.J., and McDonald and K. F. Kelly, JJ.

PER CURIAM.

Respondents Susan Graham and Charles Rigg appeal as of right from the family court's order terminating their parental rights pursuant to MCL 712A19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). We affirm as to Susan Graham but vacate as to Charles Rigg for the reason that Mr. Rigg lacks standing to assert any legal rights as to any of the minor children at issue herein.

I. Basic Facts and Procedural History

This case has a lengthy factual history spanning over a two and a half year period. Susan Graham (hereinafter referred to as "Respondent Graham") has four minor children. All four

children have different fathers. Respondent Graham claims and Charles Rigg (hereinafter “Respondent Rigg”) affirms that he is QR’s biological father¹. On May 2, 1997, a Petition alleging abuse and neglect was filed against Respondent Graham. The initial petition also named Respondent Graham’s former husband Jack Graham along with Charles Rigg; QR’s “putative father.”² On May 30, 1997, a juvenile court officer filed a motion to review custody as regards the four minor children. Finding that the children’s well being was substantially at risk, the referee placed the children with the Michigan Family Independence Agency (hereinafter “FIA”) for out-of-home placement. On June 10, 1997, the court held a hearing and affirmed the referee’s decision. After Respondent Graham entered a plea, the court took jurisdiction over the children on July 15, 1997.

The record reflects a sustained effort on the part of the FIA to reunify this family over a two and half year period. By April 13, 1999, all of the children were placed back in Respondents’ home. However, in the fall of the same year, the children were once again removed because of Respondents’ chronic failure to consistently comply with all applicable court orders.

After conducting a three day hearing, the family court found that the conditions culminating in adjudication continued to exist. Accordingly, the family court terminated Respondent Graham’s parental rights to all four children. The family court recognized that Respondent Rigg did nothing to establish his status as QR’s legal custodian, but notwithstanding, noted that he participated in the services provided by FIA and also appeared at the termination hearing. Accordingly, the family court held that it was in the children’s best interest to terminate Respondent Riggs’ parental rights. The family court further held that it was in QR’s best interest to terminate Respondent Rigg’s parental rights as QR’s “putitive father.”

II. Standard of Review

Decisions to terminate parental rights are reviewed for clear error. *In re Sours*, 459 Mich 624; 593 NW2d 520 (1999).

A. Respondent Graham

After carefully reviewing the record, this court is satisfied that the family court did not clearly err in finding that the provisions delineated in MCL 712A.19b(3)(c)(i), (g) and (j) were established by clear and convincing evidence, to wit, 182 or more days have elapsed since the initial dispositional order, and after two and a half years of FIA’s sustained efforts to reunify this family, respondent is not any closer to that goal than she was when the FIA filed the initial dispositional order. At one point, the children were placed back with respondent only to be

¹ Although Respondent Graham and Respondent Rigg both claim that Respondent Rigg is QR’s biological father, Respondents did not proffer any evidence at the termination hearing definitively establishing the biological connection.

² The initial petition also named “Scott” as a putative father. The fourth father was not identified. Respondent Rigg is the only “putative father” that appeared at both the initial hearing in May, 1997 and the termination hearing in April, 2000.

removed from her care a second time. Respondent's failure to consistently comply with all applicable court orders for the preceding two and a half years strongly suggests that respondent will not be able to do so within a reasonable time considering the children's age. Moreover, the record indicates that if the children are returned to respondent's home again, there is a reasonable likelihood that the children would be harmed. Accordingly, with regard to respondent Graham, this court affirms the family court's findings and disposition in all respects.

B. Respondent Rigg

The parties did not raise an issue concerning Respondent Rigg's standing to appeal the family court's determination due to Respondent Rigg's failure to obtain documentary evidence establishing his paternity. Although all parties seem to accept that Respondent Rigg is QR's "putative father," the fact remains that the lower court record is devoid of evidence definitively establishing same. Because this is an important issue, we deem it necessary to raise, *sua sponte*, whether Respondent Rigg has standing to appeal the family court's decision. We hold that he does not. We therefore vacate that part of the family court's decision insofar as it pertains to Respondent Rigg for the reasons discussed herein.

1. Respondent Rigg's Standing

The Juvenile Code defines the term "father" at MCR 5.903(A)(4)(a) as "a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock." The term "child born out of wedlock" is a term of art defined in the current version of the Paternity Act as:

"[a] child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a).

In the case at bar, the record is unequivocal. Although Respondent Rigg and Respondent Graham both acknowledge that Respondent Rigg is QR's biological father, it is undisputed that at the time of QR's birth, Respondent Graham was married to Jack Graham. Respondent Rigg testified that he was not permitted to sign an Acknowledgment of Paternity because Respondent Graham was still married. Respondent Rigg further testified that even after a court held a hearing and annulled the marriage between Respondent Graham and Jack Graham, Respondent Rigg failed to follow the necessary steps to definitively establish paternity. Absent an adjudication by a court of competent jurisdiction finding that QR was a "[c]hild . . . born or conceived during a marriage but not the issue of that marriage," for purposes of the Paternity Act, Respondent Rigg, as the purported biological father, lacked the requisite standing to establish his paternity³.

³ See *McHone v Sosnowski*, 239 Mich App 674; 609 NW2d 844 (2000)(holding that the biological father did not have standing to pursue an Order of Filiation when there was no prior judicial determination that the child was not the issue of the marriage).

The family court recognized that Respondent Rigg was not QR's legal father by virtue of Respondent Graham's marriage to another man at the time of QR's birth. Notwithstanding, the family court referred to Respondent Rigg as QR's "putative father." In that capacity, the family court proceeded to determine whether it was in QR's best interest to terminate Respondent Rigg's rights as the "putative father."⁴ Since Respondent Graham's marriage to Jack Graham provided QR with a legal "father" as defined in MCR 5.903(A)(4), Respondent Rigg cannot be QR's "putative father." A "putative father" cannot coexist with a legal father irrespective of any biological connection between the "putative father" and the minor child. *McHone v Sosnowski*, 239 Mich App 674; 609 NW2d 844 (2000).

For purposes of the termination proceedings therefore, Jack Graham is presumed to be QR's legal father. Accordingly, as the legal father, only Jack Graham would have the requisite standing to appeal the family court's findings. Respondent Rigg does not. Since Respondent Rigg lacks standing to establish paternity, Respondent Rigg lacks standing to appeal the family court's determination that it is in QR's best interest to terminate his parental rights. However, even if Respondent Rigg established paternity and had standing to appeal the family court's decision as to QR, there was ample evidence placed on the record to support the family court's decision that it was not in the children's best interest to continue with reunification efforts and terminate Respondents' parental rights. Despite two and a half years of substantial agency service, the record reveals that Respondents failed to make any significant changes in virtually all areas of concern.

II. Conclusion

Decision affirmed as to Respondent Graham but vacated as to Respondent Rigg for the reasons discussed herein.

/s/ Jane E. Markey
/s/ Gary R.. McDonald
/s/ Kirsten Frank Kelly

⁴ During the termination hearing, the Court specifically addressed Appellant Rigg's legal status with regard to QR. The court stated, "[t]he Court does recognize that . . . Mr. Rigg has not stepped forward, though he has testified today that he was the father of [QR], he has not stepped forward to sign an Affidavit of Paternity. His is not the legal father of [QR]. He's the putative father with testimony that he believes he is the father. [T]he Court is certainly aware of how he is viewed by the law as it relates to [QR] and . . . will keep that in mind in determining whether or not, as a putative father, his rights should be terminated in [QR]."