

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DONAHVEN PAUL PARRISH,
Minor.

MARIA HUNTER and JEFFRIE HUNTER,

Petitioners-Appellees,

v

PAUL PARRISH,

Respondent-Appellant.

UNPUBLISHED

June 5, 2008

No. 284017

Berrien Circuit Court

Family Division

LC No. 2007-000105-NA

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(f)(i) and (ii). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 356-357; *Sours, supra* at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Miller, supra* at 337; MCR 2.613(C).

There was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(f)(i) and (ii). Petitioner Maria Hunter, Donahven's maternal grandmother, was appointed as his legal guardian on May 31, 2005, after the death of Donahven's mother. Respondent, who has been incarcerated in federal prison, did not make any financial contribution toward Donahven's care during the past two years. Respondent never sent a monetary gift or anything for Donahven's future care. Other than sending birthday cards,

respondent did not write or call Donahven. There was no relationship between respondent and Donahven. In fact, Donahven never spoke of respondent and did not recognize his pictures.

Contrary to respondent's assertion, there is no evidence on the record that he was unable to financially support Donahven. In his brief on appeal, respondent acknowledges that he received wages in prison but argues that those wages were "miniscule." The statutory language in MCL 712A.19b(3)(f)(i) does not establish a minimum amount that must be contributed by a parent to demonstrate financial support for a child. The record makes it clear that respondent offered no monetary support for Donahven in the past two years. Respondent made no good faith effort to give what he could from his limited prison earnings. Thus, termination under MCL 712A.19b(3)(f)(i) and (ii) was not in error.

Respondent also argues the trial court erred by failing to advise him of his right to counsel and by failing to appoint counsel to him. As respondent correctly notes, he is listed as the father on Donahven's birth certificate, which was issued by the state of Indiana. However, while the presence of a man's name on a minor's birth certificate is a good indication that he may be the child's father, it does not itself create parental rights in Indiana or in Michigan.¹

Respondent was not a "respondent" in the lower court proceedings because his paternity had not been established and he had not otherwise legally recognized Donahven as his son. MCR 3.903(A)(7); MCR 3.915(B). A "respondent" is "the parent . . . who is alleged to have committed an offense against a child," or as defined in MCR 3.977(B). MCR 3.903(C)(10). MCR 3.977(B) defines "respondent" as "(1) the natural or adoptive mother of the child; (2) the father of the child as defined by MCR 3.903(A)(7)."

Thus, whether respondent was entitled to a court-appointed attorney depends on whether he was established as Donahven's legal father. In this case, there was no evidence respondent was Donahven's legal father as defined by MCR 3.903(A)(7). Because respondent was not Donahven's legal father, he was not entitled to court-appointed counsel. See *In re Gillespie*, 197 Mich App 440; 496 NW2d 309 (1992). Further, the right to counsel in termination of parental rights cases requires affirmative action on the part of the respondent to trigger and continue the appointment of counsel. *In re Hall*, 188 Mich App 217, 218; 469 NW2d 56 (1991) (holding that under MCR 5.915(B), now MCR 3.915(B), the respondent must take affirmative action to trigger the appointment of counsel). Since respondent did not take any affirmative action to establish paternity for Donahven, the appointment of counsel was not triggered.

Although a putative father in Michigan is generally afforded an opportunity to assert his parental rights in a child protection proceeding, the putative father's rights differ from those of a legally recognized parent. *In re Gillespie, supra* at 445-446; MCR 3.921(C). See also *In re CAW*, 469 Mich 192; 665 NW2d 475 (2003). In termination proceedings, the trial court has

¹ There are only two ways to establish paternity in Indiana where Donahven was born. According to Burns Indiana Statutes Annotated § 31-14-2-1, a man's paternity may only be established in an action under this article; or by executing a paternity affidavit that conforms to the requirements of § 16-37-2-2.1. There is no evidence that respondent established paternity to Donahven in Indiana at the time of his birth.

discretion to notify putative fathers and/or determine that a putative father is in fact a natural father pursuant to MCR 3.921(C). According to MCR 3.921(C)(2), after notice has been given to the putative father, the court may determine that the putative father has been served in a manner calculated to provide notice and, if a preponderance of the evidence establishes that the putative father is the natural father of the minor, give the putative father 14 days to establish his relationship according to MCR 3.903(A)(7).

The record shows that the trial court went to great lengths to ensure that respondent had been properly notified and served copies of the summons and petition. The court delayed the proceedings on several occasions despite petitioners' counsel's offer of proof that respondent had been served. According to the record, respondent was served with a copy of the summons and petition on October 31, 2007 at 10:39 a.m. The trial court did not issue a decision terminating respondent's parental rights until the hearing on November 14, 2007. Pursuant to MCR 3.903(A)(7) and MCR 3.921(C)(2)(b), respondent was given 14 days to establish paternity but failed to do so. Accordingly, because respondent was not Donahven's legal father as defined by MCR 3.903(A)(7), and he was not a parent for purposes of these proceedings as defined by MCR 3.903(A)(17), he was not entitled to court-appointed counsel.

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering